

POST-WAR  
BANKING  
IN  
INDIA  
AND

A Case for Legislation

R. M. MITRA

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POST-WAR  
BANKING IN INDIA  
AND  
A CASE FOR LEGISLATION

*With A Foreword by*

G. W. TYSON, C.I.E., M.L.A. (Central)

*BY*

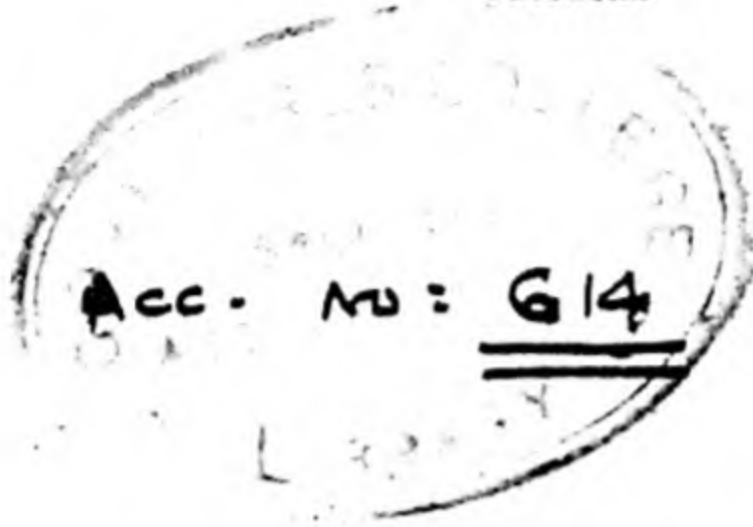
R. M. MITRA, B.A., A.I.I.B.

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A. MUKHERJEE & CO. CALCUTTA



Published by  
A. R. Mukherjee  
2, College Square,  
Calcutta.



Price Rs. 3/8

332.1  
M 68 P

Subj: Bank & Banking. India

332.1034

1631P

Printed by  
N. N. Hazra  
at BOSE PRESS  
30, Brojo Mitter Lane,  
Calcutta.

DEDICATED  
TO  
Sir C. D. DESHMUKH, C.I.E.  
*Governor, Reserve Bank of India*

*Whose able hands and unquestioned wisdom  
will shape the future of Indian Banking*



# Foreword

BY

G. W. TYSON, C.I.E., M.L.A. (Central)

Though I do not associate myself with all the conclusions he has drawn, Mr. Mitra's book on *Post-war Banking in India*, to which he invites me to write a foreword, makes its appearance at a time when Indian banking is entering a new phase. During the war years there has been an enormous expansion of banking institutions in India—much of it good, some of it of less obvious value. The era of development and reconstruction to which India looks forward calls for an examination of present banking trends, and the new Bill which is now before the Central Legislature is designed to regularise some of the less desirable practices and anomalies that have come to light in recent years. In presenting the chief issues in a compact and readable form to the general reader, Mr. Mitra has provided a valuable addition to the literature on the subject. He has made out a case for legislation and related it to similar measures which have been taken in other countries.

G. W. TYSON.

Calcutta,

13-5-46.





## PREFACE

The question of control of the business of banking has acquired considerable importance in this country during the last a few years since the issue was brought to a head by the active intervention of Reserve Bank of India in the direction of formulating and sponsoring a bill to institute proper legislation on the subject.

I believe that this question of banking control, by legislation or otherwise, is a matter not simply of topical interest, but one affecting the continued growth and development of the economic situation of a country, in general, and banking in particular. I have tried, therefore, to present in this book an objective study of the problem of banking control and the close dependence of such control on the economic development and requirements of the country concerned.

The book proposes firstly, to enter into the history of banking growth and ascertain the present stage of development, particularly, as affected by the influence of the Second Great War, secondly, to enquire into the measures of control adopted by various countries at different times to deal with their problems of the banking business, thirdly, to examine

the adequacy of the bill (as now introduced in the Central Legislative Assembly) in relation to economic and banking requirements of this country, and lastly to suggest the lines on which really helpful legislation may be framed in consonance with the lines adopted in countries facing problem similar to those of India.

I shall deem it a sufficient reward if the book proves of any use to the legislators, bankers, and the depositors whose wise and proper judgment will determine the future of Indian Banking.

I owe a debt of gratitude to Mr. G. W. Tyson, C.I.E., Editor, *Capital*, for the foreword he has kindly written for this book.

I may add in conclusion that a few chapters contained in the book were previously published in the daily paper "Nationalist" in the form of articles contributed by myself.

*Calcutta, the 14th May, 1946.*

AUTHOR.

# CONTENTS

|  | PAGE |
|--|------|
| 1. PRELIMINARY .. .. .   | 1    |
| 2. INTRODUCTORY—GROWTH OF BANKING IN<br>ENGLAND—BANK FAILURES IN ENGLAND<br>—GROWTH OF BANKING IN INDIA—<br>SCOPE OF BANKING BUSINESS .. | 3    |
| 3. INFLUENCE OF WAR ON INDIAN ECONOMY<br>—CURRENCY INFLATION AND POST-WAR<br>BANKING—NEED FOR CAUTION ..                                 | 19   |
| 4. STERLING ASSETS—NEED FOR BANKING<br>LEGISLATION—PRINCIPLES OF LEGISLA-<br>TION .. .. .  | 27   |
| 5. A BILL FOR CONTROL OF BANKING—AN<br>EXAMINATION OF THE BILL ..  | 37   |
| 6. DOUBTFUL HYPOTHESIS, BASIS OF THE<br>BILL—A CONSTRUCTIVE SCHEME FOR<br>BENEFICIAL LEGISLATION ..                                      | 49   |
| 7. THE ARGENTINE BANKING LAW—REALI-<br>SATION OF BANK ASSETS—PROTECTION<br>OF DEPOSITORS—CONCLUSION ..                                   | 61   |

|   | PAGE |
|---|------|
| 8. APPENDIX "A"—BANKING COMPANIES<br>BILL, 1946 .. .. . | 69   |
| 9. APPENDIX "B"—BANKING COMPANIES<br>BILL, 1944 .. .. . | 132  |
| 10. APPENDIX "C"—A MEMORANDUM ON<br>1944 BILL .. .. .   | 164  |

# **POST-WAR BANKING IN INDIA**

## **AND**

# **A CASE FOR LEGISLATION.**

### **PRELIMINARY**

In view of the growing difficulties of the developing economy of the country it has been competently held necessary to undertake legislative and executive control of various economic activities in India. The question of instituting proper controls on the business of banking as pursued in this country has also been engaging attention for some time past.

This book proposes to undertake a survey of the banking conditions as now prevailing in this country in the context of the economy as has developed since the middle of the last century, and also, in the light of the conditions as are found to have obtained in countries which were called upon to deal with problems similar to those which India is now faced



with in attempting to rehabilitate the banking structure of the country.

The book will then proceed to examine the proposal which now holds the field for legislative and administrative control of banks, and proposes, further, to set out a scheme for controls deemed to be best calculated to serve the true interests of the country's economy in general, and banking, in particular.

## CHAPTER I

### **Introductory**

A study of the effects of war-time activities on Indian Banking emphasises the supreme necessity of a well-devised scheme of legislation to guide and control the business of banking as pursued in this country.

Indian Banking to-day is faced with the same problems as encountered the Argentine in 1935 when legislation to re-organise banking was introduced in that country. There is no "uniformity amongst the constituent units." Some banks are "foreign institutions," others are "local institutions concentrating mainly on the financing of agriculture and of extractive and preparative industries." There are "undesireable methods of attracting business." There is "no norm of banking conduct such as exists, for example, in England" (Refer "Commercial Banking Legislation and Control" by A. M. Allen & Others).

Before we plunge into the picture of post-war banking in India it would, we believe, facilitate a proper comprehension on our part if we obtain a view, even if compressed, of the banking structure as it

evolved during the years preceding the outbreak of the Second world war, and if we are enabled to acquire an understanding of the business of banking.

### **Growth of Banking in England**

It is sometimes assumed that the business of banking has been imported into this country from the western world. This assumption is not supported by the facts of history. It should be admitted, however, that the growth of banking took rapid strides in England and several continental countries in the nineteenth and twentieth centuries while India slumbered in this as in many other departments of human activities. Banking seems to have the same ancient origins, and further, to have followed the same course of growth in this country as in other countries. The emergence of historical factors interrupted, however, the course of continued growth in India over long stretches of years during the last two centuries.

We are told by some scholars that the English word 'Bank' derives its origin from the Italian word 'Banco' which means a bench. It is said that the Jews in Lombardy Street used to carry on their business of money-lending and money-changing on benches in the market place. It is also held by other scholars that when the Germans were masters of a considerable

part of Italy the German word 'banck' came to be used for the Italian word 'Monte' which signifies a public Loan. The Bank of Venice was originated for the management of a public loan. The word 'banck' was in course of time italianised into 'banco' and loans, both public and private, were called in Italian language as 'banchi' though the Italian counterpart 'monti' was still found in use.

These scholarly researches relate the origin of banking to money-lending, money-changing, and management of public loans.

It is said that English banking 'had no existence' before the year 1640 (Refer MacLeod) when King Charles seized £1,30,000 in bullion deposited in the Tower by the city merchants. The merchants took fright and abandoned their long-acquired habit of depositing bullion and coin at the Tower. They transferred their confidence to goldsmiths. The goldsmiths lent out these deposits at profitable rates of interest and gradually began to attract deposits by offering interest to the depositors. Receipts granted by the goldsmith for these deposits soon came to be circulated in exchange in the same manner as coins. These receipts are regarded as the precursors of bank notes. The goldsmiths, also, adopted the business of money-changing which was facilitated by their knowledge of coins and made profitable by the disturbed



political conditions. The goldsmiths succeeded in making enormous fortunes as a result of carrying on these transactions. Sir Francis Child was a celebrity amongst these goldsmiths. These goldsmiths came to be looked up to for assistance in times of financial stringency of the State. It seems that transactions of the goldsmiths with the Government originated during the days of the Republic under Cromwell, but grew in frequency and volume during the reign of Charles II after Restoration.

Insistent demands soon arose for the creation of banks on the models of those in Venice, Genoa, and Amsterdam, and also of many other types. It was claimed that the establishment of banks would help in lowering rates of interest, introducing a note-currency which was supposed to be of immense possibilities for economic development, and in providing a cheaper and respectable source of finance for the State. In the year 1694, through untiring efforts of William Paterson, an apparently unconnected act of legislation known as "Tonnage Act" authorised the creation of the first English Bank, "The Governor and Company of the Bank of England" which started its business with lending to the Government the whole of its paid-up capital. This bank, popularly known as Bank of England, functions as Central Bank in England and occupies a pre-eminent position.



It is interesting to note that the origins of earlier banks in Venice, Genoa and Amsterdam are also associated with almost similar transactions of loans to Governments.

The growth of banking in England, in so far it related to transactions with the public, was, however, for a long time associated with the issue of notes. The restrictions in the matter of note-issue imposed on banks, incorporated or formed with more than six persons in partnership, led to the growth of the cheque system as early as about the year 1772. With the passing of the Bank Charter Act of 1844 English banking came to be based on the cheque-system with the Central bank of the country (Bank of England) monopolising the business of issue of notes. The main line of business, however, continued, as during the days of goldsmiths, to be loaning out monies received by way of deposits from customers.

### **Bank Failures in England**

The history of English banking, not unlike that of Indian Banking, contains dismal stories of over-trading, speculation, fraud, and dishonest transactions. "A number of shopkeepers, chemists, tailors, and bakers became bankers and flooded the country with worthless paper"—so writes A. Andreades in his "History of the Bank of England."

Beginning with the South Sea Bubble in 1720 England has also often been involved in frenzied activities of speculation. Between the years 1750 and 1793 banks in England outside London grew in number from 12 to 400. The years 1772, 1793, 1797, 1810, 1812, 1814, and 1816 were years of disastrous failures and it has been calculated that during the years 1791 to 1818 about 1,000 banks came to grief. The Parliament was moved to pass into law in 1797 an Act known as "Restriction Act" to deal with the situation. The years 1825 and 1836-39 were again plunged into crisis and led to the adoption of the Act of 1844. But periodical emergence of crises and continuance of doubtful practices of banking were not stopped. The years 1847, 1857, 1866, 1878 and 1890 stand out as black years of failures and disasters.

### **Growth of Banking in India**

Indian Banking in its origin and course does not differ in essentials from English banking. Vedic scholars discover the existence of money-lending business as early as 2,000 B.C. The literature of the Buddhist period contains references to Sresthis and their loans to kings. The laws of Manu indicate that even deposit-banking was being practised in the second or third century of the Christian era. Mundis or indigenous bills of exchange were found in use in the

12th century. Money-changing developed into a very profitable business during the Moghul rule when various kinds of metallic money were in use in different parts of the country. The money-lenders combined all the above classes of business, grew in the 17th and 18th centuries to be powerful like the goldsmiths of England, and came to be known as Jagat Seths (World-bankers).

It was at this juncture, however, that India's destiny had lost its even course. The advent of the British rule interrupted the whole course of India's history which had been one of assimilation and evolution.

The needs of British trade could not be fully served by the indigenous bankers or money-lenders as the foreign traders were ignorant of the language of the country and the indigenous bankers were not acquainted with the ways of finance of the British trade. It is true that other causes also operated to weaken the position of the money-lenders even as the position of the goldsmiths in England was shaken by the 1694 Act. But in England there was no transplantation of foreign seeds and an overthrow of the indigenous system. In fact, in England, the goldsmiths were transforming themselves into private bankers, and then, private bankers either transformed themselves into or amalgamated with joint-

stock banks. In 1770 when England was on the road to the growth of modern banking and introduced the cheque system, India saw the birth of a new institution of finance known as Agency Houses. Such of the indigenous bankers as managed to survive could not establish any living contact with the new direction which banking took on the basis of the requirements of the English foreign trade. These money-lenders and indigenous bankers continued their old methods and confined themselves to finance of agriculture and internal trade in rural areas.

Hindusthan Bank came into existence in 1770 under the auspices of the Agency Houses. In 1806 the first of the Presidency Banks was established as the Bank of Calcutta, and received its charter and was renamed as Bank of Bengal in 1809. It will be of interest to note that one of the restrictions imposed by the charter was that the Bank's rate of interest could not exceed 12 per cent.

The Banks set up by the Agency Houses mostly disappeared after the crisis of the years 1829-33. The Banks subsequently brought into existence, though managed by Europeans, also came to grief about the year 1860. Following on the example of England Joint Stock banks were allowed to be established with limited liability under an Act passed in the year 1860. A larger number of banks came into being but failed



in the crisis following in the wake of the American Civil war. The currency confusion during the years 1873-93 did not encourage establishment of new banks. During the period beginning with the year 1865 till the end of the last century few banks were established. At the end of the 19th century there were 9 banks with capital and reserves of over Rs. 5 lacs. Their paid-up Capital and reserves totalled Rs. 14 crores and deposits aggregated Rs. 8 crores.

The first joint stock bank on the basis of limited liability and managed by Indians was the Oudh Commercial Bank established in 1881, though Allahabad Bank Ltd., came into existence in 1865 under European management. The Punjab National Bank was started in 1894 largely through the efforts of Lala Harkishan Lal. The Swadeshi movement of 1906 stimulated the growth of joint-stock type of banking. During the years 1906-13 the number of banks with capital and reserves of over Rs. 5 lacs increased from 9 to 18 with a total paid-up capital and reserves of Rs. 4 crores and deposits totalling Rs. 22 crores. Bank of India, Central Bank of India, Bank of Baroda, and Bank of Mysore came into existence during this period. The crisis of 1913-17, however, resulted in the ruin of as many as 87 banks (big and small) with a total paid-up capital of about Rs. 14 crores. The boom during the latter part of the first great war



again encouraged the establishment of banks and a crisis followed with about 373 banks going down during the years 1922-36.

In 1842 when the Agency Houses were in doldrums the Oriental Banking Corporation with Royal Charter began operations in India. After a period of tussle between East India Company and the British Government regarding their respective rights to charter banks for operations in India several British banks were allowed to open offices in India and carry on the business of exchange and remittance. In course of time banks established in several other countries also set up branches in India. These banks with Head offices outside India came to be known as Exchange Banks. The Exchange banks now engage all kinds of banking business though finance of foreign trade plays a large part.

In 1921 the three Presidency banks were amalgamated and formed into Imperial Bank of India which now acts as agent to Reserve Bank of India. In 1934 an Act was passed to establish Reserve Bank of India to act as the Central Bank of the Country, and a system of maintaining a schedule of banks with Capital and Reserves of 5 lacs and over was introduced.

An outstanding feature of the growth of Indian Banking is that, while in England every change absorbed the old elements of banking, in India after

the year 1770 every change led to exotic growths. This comparatively recent origin of the present-day elements of the Banking system has prevented Indian Banking from attaining that 'norm' which English Banking reached in the twenties of this century. It should, however, clearly be understood that banking as such is not new or modern to India but the old constituent units of the system have departed or been diverted, and new units have come into the field.

The statistics of Indian Banking as at the beginning and end of the second great war are as respectively shown on page 18.

### **Scope of Banking Business**

As the structure of banking has undergone changes over the last two centuries so the business undertaken by banks has also changed in scope and extent.

The immense growth in the volume of banking activities in American and European countries has been proportionate to the economic requirements of the respective countries. But the apparently considerable increase in Banking resources and activities of this country falls far short of the needs of a country with an area of 1.8 million square miles and a population of about 40 crores.

The nature of banking business has further evolved in other countries in accordance with changing circumstances and requirements of their economy.

In India, changes in theory and nature of business deemed to be appropriate for banks have frequently been influenced not by the requirements of the situation but by interposition of foreign examples and consideration of extraneous factors.

It would be instructive, however, to examine the outlines of the nature of business as now considered to be proper for a bank.

In 1918, in a judicial proceeding (between London Joint Stock Bank Ltd., V. Macmillan and Arthur) it was held that "the relation between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques, if the account is in credit."

The basis of banking business in England is considered, therefore, to be acceptance by banks of deposits subject to withdrawal by cheques and on demand. Until recently, deposits other than those withdrawable on demand accounted for about fifty per cent. of total deposits with banks in India. A basic difference in the nature of business thus characterises Indian Banking.

We have observed that a principal feature of the business carried on by goldsmiths consisted in granting loans and advances. This feature of banking business continued in prominence for a long time, and, it was sometimes considered that the business of banking was really to finance trade and commerce by utilising deposits and credit built on the basis of deposits. The evolution of banking in England and America has diminished the importance of this loan business which is now regarded as an auxiliary to the main business and classed with other incidental types of business, viz :—(a) collection of bills and cheques, (b) purchases and sales of shares and securities, (c) collection of dividends and coupons, (d) making periodical and other payments on behalf of constituents, (e) payment of customer's acceptances, (f) issue of drafts, circular notes and letters of credit, (g) conduct of foreign exchange business, (h) remittance of funds, (i) acceptance of bills for customers, (j) undertaking the office of executor and trustee, (k) keeping of valuables and securities in custody, (l) acting as agents, (m) managing issues of loans and other securities for governments, incorporated bodies, etc., (n) acting as treasurer for local authorities, etc.

In respect of these ancillary or auxiliary forms of business, also, Indian banking differs appreciably from English Banking. In 1939 Loans and advances made



by Indian banks worked out to about 45 to 50 per cent. of their deposits. Bill business was stimulated in England by the preponderance of foreign trade in their national economy, whereas India is possessed of a fairly self-sufficient economy, and inland trade therefore continues to be a prominent feature. The financing of inland trade is almost wholly monopolised by indigenous bankers who were not assimilated into the growth of joint stock banks. The other classes of business above detailed have not found sufficient time or scope for development in India.

American banking, and English Banking to an increasing extent, have of recent years been relying on income from service charges, whereas Indian Banking still continues to depend on earnings from interest on loans and advances. (The income from investment in Government obligations is also an important source of revenue for banks in America and England. Indian banks have recently been adopting this source in an increasing degree.

We trust the above discussions will enable us to follow the growth of Indian Banking and convince us that the disorganisation of the banking structure which took place in the middle of the Eighteenth century has not allowed Indian Banking sufficient time or opportunities for development into a recognisable "norm."

It is interesting to note that though English banking has evolved into a definite and workable pattern no legal definition of the term "banking" has yet been found acceptable in England. In the case of *Saunders vs. Carbonneau* (1910) Mr. Justice Eve emphasised the desirability of a legal definition of the term. A bill was sponsored in England in 1921 with a view to according a legal status to the business of banking, but to no effect.

Banking was, however, legally defined in India in the year 1936 as carrying on as principal business "the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft, or order" (Ref. Sec. 277-F of Indian Companies Act). A bill introduced in Legislative Assembly in March, 1946, proposes to define banking as accepting deposits subject to withdrawal on demand. Though this definition affects only companies registered under Indian Companies Act, it is yet to be proved if this definition is not too restrictive at the present stage. It will, moreover, be interesting to know if companies raising monies by way of loans repayable on demand will not come within the purview of this definition. It has been judicially pronounced that a "Deposit" accepted by a bank is nothing more and nothing less than a "Loan" granted to it by a creditor.

*Statistics re : Indian Banking*

|  | Number |      | Number of Branches |        | Deposits             |                       |
|--|--------|------|--------------------|--------|----------------------|-----------------------|
|  | 1939   | 1945 | 1939               | 1945   | 1939                 | 1945                  |
| <i>In Rupees</i>   |        |      |                    |        |                      |                       |
| (1) Imperial Bank of India .. 1  |        | 1    | 381                | 427    | 87 crores<br>76 lacs | 254 crores<br>73 lacs |
| (2) Exchange Banks .. 19   |        | 16   | 99                 | 80     |                      |                       |
| (3) Indian Joint Stock Banks<br>(being scheduled) .. 39                                    |        | 74   | 798                | 2,321  | 149 crores           | 698 crores            |
| (4) Non-Scheduled Banks<br>having paid-up capital and<br>reserves of Rs. 50,000/- and over | 631    | 635  | •477               | †2,000 | 14 crores<br>88 lacs | 60 crores<br>85 lacs  |

\* The number relates to banks with Capital and reserves of Rs. 1 lac and over.

† This figure is an estimate and covers all non-scheduled banks. The corresponding estimate for the year 1939 may be put at about 1,00 branches.



## CHAPTER II

### **Influence of War on Indian Economy**

The War that has just ended has shaken the world out of its shape and not the least, in its economic sector.

Capitalism and Socialism have lost their distinctive accents. Contractual relationships have been terminated and replaced, on a wide field, by statutory regulations. Economic activity has ceased to be a private enterprise to be pursued in the manner determined by individual prudence, resources, or luck. Internal trade is heavily hedged in by control orders affecting production, distribution, and consumption. External trade faces additional barricades in the form of export licence, import licence, shipping space, and exchange allotment. Control of prices, determination of profit-ratio, and imposition of steepening scales of direct taxation have sought to set limits to the growth and accumulation of savings. Investment is controlled by restrictions on Capital issues, scarcity of producers' goods, and licensing of manufacturers.

These controls have of course been devised and enforced not to serve the requirements of a deflationary

economy, nor to strengthen a planned economy; but to ensure steady and adequate supplies of war materials and to provide for the needs of the armed forces and the maintenance of civilian morale.

The controls have operated, therefore, not to eliminate surplus acquisitions but to divert distribution of acquisitions otherwise than through normal trade channels.

This war-time process of transmutation has not left India unaffected. She has been subjected to the process of regimentation of economic forces in a manner and to a degree which would be considered revolutionary in pre-war days of peace economy. The normal channels of Indian trade and the inter-relationship between the various constituent elements of the economic machinery have lost their pre-war courses. New forces are at work which involve careful adjustment of the entire economic set-up of the country.

It may not be out of place, here, to consider the essential differences between a war economy and a planned economy. Under a war economy increasing production is brought about under a system of credits based on fiduciary issues without the backing of any material value in the form of additions to the nation's wealth. The increased production disappears in the

process of current consumption made in course of the undertaking of the warfare. But the enlargement of currency produced by the mounting credit does not disappear with the disappearance of the production. A planned economy, on the other hand, creates a continuing stream of additions to the nation's wealth. Here, also, increasing production is set in motion by the employment of the instrument of credit. But, in this case, credit is based not on the fiduciary capacity of the State but on tangible material assets, and the credit is so devised that it liquidates itself with the use, deterioration, or destruction of these assets. The inescapable legacy of a war carried on a structure of credit is, therefore, enlarged purchasing power unsupported by a corresponding volume of purchasable goods—a phase which is technically known as 'inflation.'

### **Currency Inflation and Post-War Banking**

It is true that the weight and volume of inflation have been considerably lessened by various measures adopted by the State in the direction of encouraging investment in Defence Bonds, Savings Certificates, etc.; by mopping up purchasing power through high levels of direct taxation; and introducing other methods of immobilising surplus purchasing power. But, the fact remains that in the wake of a relentless

pursuit of war-economy the volume of currency in the form of notes in circulation has increased, in India, from as low a figure as rupees 172 crores 37 lacs on 1st September, 1939, to Rupees 1,219 crores 18 lacs as on 8th March, 1946. This currency spiral is backed by specie amounting to not more than four per cent, by Government of India obligations to the extent of about 5 per cent, and sterling credits held by Reserve Bank of India to the vast extent of about 91 per cent. It will thus appear that the picture of Indian currency as presented by the above figures fits in closely with the trends of war economy described in the foregoing paragraphs.

Indian economy as developed by the forces operating in furtherance of a war economy does not differ from that of other belligerent countries so far as the expansion of currency is concerned. But the similarity does not go much further.

The chief differences may be enumerated as below :—

(a) The fiduciary backing of Indian currency consists largely in credit extended to a foreign country (England) which depends for its satisfactory liquidation on the debtor country's capacity to make exports to our country in excess of the amount of exports necessary to meet her imports from our



country and our capacity to absorb such exports from the debtor country without detriment to the internal economy. This credit has been popularly known as 'sterling assets'. (b) The money market in other countries is properly organised in different sections. The supply of capital for long-term needs of business is facilitated by underwriters and issue houses ; and current needs are attended to by banks by providing accommodation mostly against self-liquidating assets, and by discount houses by purchasing bills arising in course of transactions of trade. The Indian Money market is in process of growth. The different operations involved are not yet sharply distinguished. The functions of different institutions in respect of these operations are not also separated by recognisable demarcations.

The bearing of these developments on the future course of Indian Banking creates a problem which requires delicate and yet firm handling. Indian Banking has, in a full and fair measure, participated in the results of the expanding currency. The deposit-funds of scheduled banks have undergone an exciting rise from a total of Rupees 236 crores 60 lacs as on 1st September 1939, to a total of Rupees 998 crores 95 lacs as on 1st March, 1946. The deposits of non-scheduled banks have also registered an almost similarly sharp rise—the total figure having risen from

16 crores 74 lacs on 31. 12. 40 to about 56 crores 41 lacs as on 30. 3. 45.

The constituent elements of these liabilities and also of the assets supporting the liabilities have moved more in line with the conditions prevailing in other advanced countries. The percentage of demand liabilities to total liabilities has increased in the case of scheduled banks from about 57 per cent, to about 72 per cent, and in the case of non-scheduled banks from about 32 per cent, to about 40 per cent. The incidence of loans and advances in the port-folio of assets of scheduled banks decreased from about 45 per cent. to about 26 per cent. in the middle of 1942, and is now ranging between 30 per cent. and 35 per cent. During the hectic days of the emergence of Japan into war cash held by scheduled Banks leapt up to about 21 per cent of total liabilities. This item has since receded back to the prewar average of between 12 and 15 per cents. These reshufflings of items in the port-folios of assets have led to a great increase in the volume of Government securities held by scheduled banks, in particular, and banks in general.

It is now common knowledge that the currency in a country is not represented by notes and coins alone but also includes cheques operating on bank deposits. Indian currency contains, therefore, explosive elements in its both aspects of notes and



deposits. The former may be exploded by an inefficient handling of sterling assets and the latter by any considerable draining of deposits arising from absence of wise guidance of the existing deliberate controls imposed on trade and industry.

### **Need for Caution**

We have described above how the normal forces of business have been brought under control, and how on the other hand, Indian business is poorly equipped with any effective machinery for providing working capital. The situation calls, therefore, for all the wisdom and resources of leaders of finance and public opinion to ensure that Indian economy is not disrupted by the happening of any of the following events, namely, (1) import of non-essential consumers' goods and inefficient or out-of-date capital goods in discharge of sterling credits, (2) embarking on doubtful ventures by individuals depending on their accumulated savings in the form of bank deposits or Govt. obligations, (3) financing of doubtful ventures by banks in the flush of possession of enormously increased deposits, and (4) large-scale financing of business by banks without having proper regard for the fact that their deposits are now, in the main, liable to withdrawal on demand.

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It is not necessary for our purpose to examine in detail the manner in which the happening of the above events may work adversely to the detriment of Indian economy. But the recognition of this possibility brings us to the question of the future of Indian Banking.

## CHAPTER III

### **Sterling Assets**

We have, in the previous chapter, tried to bring into clear relief the cross-roads at which Indian Banking stands to-day.

Liquidation of sterling assets brought about by imports, whether of doubtful or genuine value, will result in a reduction of the present backing of the note-currency. A call on the savings, whether for productive or unproductive purposes, will also lead to withdrawal of deposits with banks and to a corresponding diminution in the volume of Govt. Securities held by banks. Thus the currency of the country faces a crisis threatening serious repercussions on the entire economy.

But a wise utilisation of the sterling assets and internal savings need not cause an unwelcome fall off in the volume of currency. Notes and deposits, instead of being supported by the credit of the Governments in India and England, can maintain at, and even, extend beyond their present levels on the basis of sound business assets which healthy productive activities will help to create.

The frenzied activities of the war-period have brought about little or no effective addition to the fixed capital or circulating capital of the country in the shape of tangible assets. Industrial plant and machinery worn out by constant and heavy use require to be reconditioned. New industrial techniques introduced by scientific developments call for replacements of the existing plant.

The sterling assets may be utilised to acquire imports of either necessary factors of production or unworthy articles of consumption. Similarly, deposit or note currency may, on the one hand, be drained for purposeless consumption or sunk in unsound production, and on the other hand, be mobilised to further productive activities of enduring value.

### **Need for Banking Legislation**

The increasing influence of officialdom on the play of economic forces and an absence of organised money market, as outlined in the previous chapter, heighten the danger of misdirection and mis-judgment in the impending crisis.

Indian banking in the present economic organisation of the country cannot, therefore, divorce itself entirely from activities associated with financing and directing productive agencies.



But an uncontrolled trend towards 'mixed-banking' is fraught with dangers worse than the disease sought to be remedied.

It is, therefore, a matter of impelling urgency that proper legislation should be undertaken to control banking in India so that, left to its unaided wisdom, banking may not grow or function in a direction harmful to the ultimate economic interests of the country.

Introduction of legislation designed to control banking will not, also, be out of tune with the economic machinery of controls set up during the last six years. Even if we assume that these controls will be lifted after the cessation of hostilities is officially recognised, a case for legislation for banks does not become weakened. (The removal of present economic controls, though eliminating inefficient and indifferent official interference, will leave a vacuum in the economic structure. A resumption of activities by pre-war agencies cannot be brought about without strain on the economic nerves of the country.

A system of controls, framed to guide, warn, and protect banking, and administered by the apex bank of the country is thus an imperative necessity.

It cannot, however, be over-emphasised that a sound banking legislation should be conceived and administered not with a view to exercising surveillance, but with a view to extending protective guidance.



An appropriate statement of objects and reasons for such a legislation should contain only three chapters sub-headed 'guidance' 'Warning' and 'Protection.'

### **Principles of Legislation**

These three cardinal principles of banking legislation, namely guidance, warning and protection, can be properly worked out in an endeavour to re-fashion and remodel the existing structure of banking and not in an overzealous attempt to erect a new structure on the ruins of the existing one.

We shall require to guard ourselves against facile application of any formula evolved in course of banking growth in England, or any other country, for the matter of that. We should derive lessons from the apparently conflicting lines of development which English banking and American banking have respectively taken. On the one hand, we note that English banking has been considerably benefited by the large-scale operations of amalgamation undertaken in the first-quarter of this century and the consequent development of the branch-banking system. On the other hand, we observe that American system of 'unitary banking' has developed strength and resources of inspiring magnitude.

We shall attempt below a short study of the law and practice of banking control in its different aspects as prevailing in different countries so that we may obtain a fair comprehension of the problem facing us in formulating proper banking legislation for the country.

As early as in the year 1824 Sweden adopted legislation intended to control banks. But no legislation controlling the activities of banks, as such, was contemplated in any other country in the years prior to the year 1844 when the English Joint Stock Bank Act, 1844, was placed on the statute. It is worthy of note that though England thought of specialised banking legislation as far back as in the year 1844 she now stands as almost the only country where there is minimum of legal control of banking, and such control, as exists, is embodied almost entirely in the common code relating to all companies. America, Canada, and Japan first undertook banking legislations in the years 1863, 1871, and 1872 respectively. The years 1914-18 hastened quick developments in other countries. But it is during the thirties of this century that large-scale banking legislation has been introduced in almost all the important countries.

Legislation has dealt with and practice has become crystallised in respect of the following matters, generally, viz :—

*(a) Capital*

Legislations in Canada and American countries provide for double, and in some cases, triple liability of share-holders. Most countries have legislated for minimum capital requirements. In America and Japan these requirements are also related to the size of population of the locality in which the Banking offices are situated. In Switzerland, on the other hand, the capital of a bank is required to be a fixed percentage of its liabilities.

*(b) Cash and Liquid Assets*

The avowed purpose of cash reserve is liquidity. Some countries look to balances with the Central Banks of the countries to secure this liquidity. America and India are outstanding examples in this respect. Other countries, like Canada, regard both currency-notes and balances with Central Bank as sufficient for the purpose. Still other countries, like Germany, Switzerland, and Sweden accept "readily realisable" or "easily mobilisable" assets other than cash as liquid items.

Some countries require liquid items to constitute a definite percentage of total liabilities while other countries prescribe different percentages for demand and time liabilities. Again, Switzerland and Sweden require reserves only against demand liabilities.

*(c) Restrictions on Assets.*

Rigid regulation concerning assets is regarded by many countries as making for undesirable inflexibility. But Germany, Switzerland, and to a considerable extent, America have adopted elaborate rules governing loans and advances made and assets acquired by banks.

Almost all countries, however, view with disfavour investment in or against immoveable property to any large extent. In Sweden there is a general statutory prohibition of unsecured loans. America has imposed restrictions on amounts of loans made against shares and bonds by banks, and further, requires prescribed margins to be maintained in the value of securities.

*(d) Mixed-banking.*

Banks in almost all countries, in their early periods of growth, have engaged in operations known as mixed banking. But in recent years these operations have been discouraged and banned in most countries. In Denmark, however, law specifically permits banks to co-operate in the establishment and promotion of trading undertakings.

*(e) Rates of interests.*

Interest on deposits used to be allowed and interest on loans charged at high rates in America



till before the thirties of this century. This country and Switzerland have now brought under control rates of interest on deposits, and Germany controls interest on both deposits and loans. Canada, on the other hand, controls only interest on loans, but permits as high a rate as 7 per cent.

*(f) Management.*

Regulations regarding qualifications and liabilities of Directors and Managers are now found to prevail in almost all countries. America and Japan, however, go so far as to empower the authorities to remove officers and Directors from their respective offices. Law in this respect is, however, very liberally framed in England.

*(g) Branches and expansion.*

Over-banking has been found in many countries to be associated with movements for amalgamation and branch-banking. England and Canada, however, still believe in branch-banking, whereas, America puts a heavy hand on opening of branches.

*(h) Protection.*

Arrangements have been made in many countries to take over from banks and mobilise frozen assets. America has introduced a scheme for insurance of



deposits with Banks. Canada specially protects the interest of banks in goods, wares, and merchandise which may be charged as security against loans made by banks.

(i) *Machinery of Control.*

Machineries have been created in many countries to control and inspect banks. In Finland, Norway, Sweden, and Denmark this machinery is more or less a part of the Governmental administration of the country. In Switzerland control is exercised by a commission consisting of five members appointed by the Federal Council. In Argentina and America the Central Bank of the country functions as the main controlling authority.

These machineries are principally concerned with ensuring proper observance of law relating to banks, receiving periodical returns and statements from individual banks, issuing licence to a new bank, controlling bank-amalgamations, supervising and controlling bank-auditors. In Norway there is the power to summon Board meetings. In America there is the duty to assess the value of assets belonging to Banks.

The above outlines of practices of banking as followed or codified in different countries will show that law and practice differ from country to country.

A more elaborate study of banking as practised over the last two centuries will also bring out the salient fact that some practices of banking, while found to suit and even to help healthy pursuit of banking at an early stage of its growth in a country, have proved to be unsuitable to and even harmful for proper growth at a later stage in the same country.

It is therefore of paramount importance that any legislation that may be envisaged for control and direction of Indian Banking should take into account not only the features of legislations in other countries, but also the stage of banking growth and economic development in this country.

And, above all, any such proper legislation must be guided by the well-tested principles of 'guidance' 'warning' and 'protection.'

It is in the scales of these principles that the merits of any proposed banking legislation for India will have to be weighed.

## CHAPTER IV

### **A Bill for Control of Banking**

In late twenties and early thirties a conscious and deliberate movement for legal control of banking operations was sweeping over the continental countries of Europe. India followed in the wake and set up in the year 1929 various Provincial Committees and a Central Committee of Enquiry to enquire into banking conditions of India. The Indian Banking Enquiry Committee went into the question of the advisability of instituting legislation for control of Indian Banking and recommended in favour of promulgation of a special Bank Act embodying necessary provisions governing banking institutions. The committee sounded, however, a note of caution against "restrictions dealing with matters which had best be left to the discretion and sense of responsibility of the directorate and the management."

Many of the suggestions contained in this committee's report found shape in part XA of the Indian companies Act introduced in 1936 by an elaborate amending legislation. These provisions engaged the attention of Reserve Bank of India soon after the

Bank came into existence in 1935 and were considered to be falling short of the needs of the situation.

Reserve Bank drafted a set of proposals for an Indian Bank Act, and the Govt. of India put these proposals into circulation in 1940 and invited public opinion thereon. An intensification of war activities resulted, however, in a postponement of further consideration of these proposals till in Nov. 1944 a Bill on the subject of law relating to Banking companies was introduced in the Central Legislative Assembly. The bill was referred to a select committee, but owing to dissolution of the Assembly, lapsed before the committee could meet.

A new bill to consolidate and amend the law relating to Banking companies has now been brought up before the Central Legislative Assembly.

The necessity and urgency of legislation to control banking activities in India cannot be over-emphasised. The sufficiency and appropriateness of the proposed legislation will, however, have to be determined in the light of considerations on which the previous chapter has dwelt at length.

It appears that the bill represents a sincere and honest effort in the direction of controlling and directing banking companies on sound and healthy lines.

But a serious misconception of the premises on which to build seems to have affected the formulation



of the measure in its detailed provisions. The bill seems to proceed on the untenable assumption that the growth of banking has reached a culminating point where all that is required is consolidation and weeding out of unhealthy units. The bill seems to lose sight of the fact that the "considerable development" in banking that has taken place has not materially changed the situation of the country as portrayed at the first Industrial conference in the year 1890. The contrast as presented by "the hoards of unused capital" commanded by several big banks and "the poverty of the resources of the classes engaged in the production of wealth" still persists. It further appears that the entire bill has been conceived in the spirit of surveillance rather than that of guidance and warning.

### **An Examination of the Bill**

A detailed examination of the provisions of the bill brings out the following features which call for anxious reconsideration before the bill is finally placed on the statute book of the country.

#### *(a) Re: Clause 11.*

Clause 11 of the present bill has been an improvement on that contained in the 1944 bill in so far as the language of the clause removes ambiguities regarding the capital requirements of a bank having its principal place of business outside India, and in



respect of capital requirements for more than one branch in the same town or village.

The word 'locality' as appearing in item (iic) of Sub-clause (i) should, however, be properly defined to remove possibility of future disputes.

The provisions of the clause continue, however, to be vitiated by a miscomprehension of the economic situation of the country. The 600 and odd non-scheduled banks are expected to execute a long jump from their present capital position in course of a period of two to three years.

We note that the framers of the bill seek to justify the increased capital requirements as contemplated in the bill on the following grounds, viz :—  
(a) that no less than 669 banking companies went to grief during the decade 1934-43 and most of these banks possessed poor capital resources, and that  
(b) the present minimum requirement of Rs. 50,000/- is low as compared with other countries even if the disparities in economic wealth are taken into account.

It is certainly not open to contradiction that the failure of banks should be effectively guarded against. But we doubt the efficacy of the provisions for increased capital requirements in mounting guard on this front. It should also be borne in mind that no country, including England and America, has been able

to avoid painful experience of distressing failures in course of trials and tribulations of the growing years. Any assumption that Indian Banking has passed out of its growing period and can now be reduced to a uniformity of shape or size will seriously prejudice future progress. It also appears that the contention based on a comparison of the economic level of this country with that of other countries is not supported by a proper assessment of facts.

We recognise, nonetheless, that the present position regarding capital structures of banks is anything but satisfactory. We maintain, however, that the formative period of Indian Banking is not yet over, and that a rigid application of quantitative standards, before Indian Banking assumes a recognisable norm, will hinder rather than promote its growth.

We suggest, therefore, that this clause should be so amended as to require a banking company to have paid-up capital and reserves equal to not less than a prescribed percentage (say ten per cent.) of its deposit-liabilities, subject to a minimum of Rupees One lac and a maximum of Rupees Twenty lacs.

The over-riding discretion of Reserve Bank in the matter of valuation of paid-up capital and reserves as provided for in sub-clause (4) can properly be upheld. But we believe that the method and basis of valuation should be set out more elaborately. We are

in favour of equipping Reserve Bank with the maximum of powers. But we maintain that these powers should be unambiguously defined and described in elaborate details.

(b) Re ; *clause 16.*

We consider that the words "hold shares" as contained in sub-clause (2) are not free from ambiguity. It appears to us that one does not "hold shares" within the meaning of the Indian companies Act unless the shares are registered in his own name. If, however, the intention of the legislation is to extend the provisions of this sub-clause to a pledge as evidenced by delivery of share-scrips accompanied by blank transfer forms, the matter should be stated in clearer terms.

In case the latter interpretation be advocated we fear that a bank with many branches will find it extremely difficult to ensure that shares in any company so "held" by it do not at any time exceed, in amount, 20 per cent. of the subscribed capital of that company or 20% of its own subscribed capital, whichever is less.

(c) Re ; *Clause 18.*

A comprehensive system of licensing of banks is an important step towards strengthening the banking structure of the country.



We are of opinion, however, that sub-clause (4) calls for further elaborate treatment so that no banking company may be left in doubt as to how and under what (ascertainable) circumstances it will be considered to be "in a position to pay its deposits in full as their claims accrue," and "that the affairs of the company are not being conducted to the detriment of the interest of its depositors".

We believe further that in the matter of granting permission for opening new branches the Authorities should remember that the crying need of the hour is not fewer banks, but more banks of the right type. It may be observed that England with a population numbering about 5 crores can provide sufficient business for about 10,000 banking offices and that America with a population of 13 crores boasts of more than 15,000 banks. India with a population of about 40 crores can therefore hardly be regarded as being adequately served by 91 scheduled banks with about 2,800 branches and 635 non-scheduled banks with about 2,000 branches.

(d) *Re ; clause 19.*

The wording of sub-clause (2) appears to exclude balances maintained by non-scheduled Banks with the Reserve Bank from the definition of "Cash" in terms



of this clause. We consider that this ambiguity should be removed.

(e) *Re ; Clause 20.*

The principle underlying this clause deserve unqualified acceptance. We consider it necessary, however, that it should at least be negatively stated as to what shall not be regarded as " assets " so as to obviate possibilities of disagreement between Reserve Bank and the management of a banking company.

(f) *Re ; Clause 27.*

Suitable provisions should be incorporated so that a balance sheet and a profit and loss account prepared under clause (24) may be deemed to be a balance sheet and a profit and loss account prepared under the provisions of the Indian companies Act in so far as they relate to banking companies.

(g) *Re: Clause 30.*

It is of great importance that inspection of banks should be conducted at stated periodical intervals, and not simply, on occasions surcharged with suspicion. When an inspection is inspired by suspicion credit of the institution suffers almost irretrievably even if the inspection results in a verdict of soundness being awarded.

We consider it necessary, also, that definite standards should be laid down for determination that "the affairs of a banking company are being conducted to the detriment of the interest of its depositors" as envisaged in sub-clause (4).

*(h) Re: Clauses 31 to 39 (part III).*

This part of the bill is influenced by a desire to salvage as much as is possible out of the wreckage of a sinking bank. But the mechanism evolved for the purpose appears to be too sharp and too ready for safe and wise employment.

It is true that it will not be difficult for Reserve Bank to provide itself with adequate technical staff and other equipments necessary to carry through liquidation proceedings.

But unless specially protective provisions are introduced in various laws bearing on liquidation proceedings we are unable to agree that the mere assumption by Reserve Bank of the office of the liquidator will improve the situation to any great extent.

The assets of a banking company of the prevailing average size will consist mostly of loans and other obligations due by persons and relating to matters of localised concern. Reserve Bank, as an impersonal

machinery of huge dimensions, will hardly be in a position to form those personal contacts or maintain that continuous touch with local affairs as will be necessary to bring about a full and effective realisation of these assets.

The purpose of this part of the bill will be better served by arming the liquidator with special and extraordinary powers of execution and by setting up a special institution to take over from banks frozen assets. This institution will pay for these assets at an agreed rate and will, therefore, be financially interested in proper mobilisation of the immobile assets. Moreover, the banks whose assets will be thus taken over will continue in existence and, therefore, be of help in providing necessary personal contacts and continuity of connection.

It has been recognised in many countries that in undertaking a proper re-organisation of the banking structure of a country, the true interests of healthy banking will not be secured by forcing into liquidation every banking concern that has accumulated frozen assets during the years of unaided and uncontrolled existence and may thus have been rendered unable to pay its debts. The really efficacious method has been considered to be to relieve these banks of their frozen assets.

The measures contemplated in this part may,

however, be suitably introduced after a stated period has elapsed during which the above-suggested method of purging the banking structure will have been worked out.

(I) Re ; *Clause 43.*

It should be made obligatory on the Central Government to make rules to provide for matters contemplated in (a) 'Explanation' to sub-clause (1) of clause (11), (b) sub-clause 4(a) and (b) of clause 18, (c) sub-clause (4) of clause (30) ; and also in respect of all other matters likely to occasion disputes between Reserve Bank and a banking company.

We shall conclude our detailed examination of the provisions of the bill with references to clauses (8), (9), and (10) of the bill.

It would appear that under the operation of clause (9) read together with clause (8) a banking company cannot realise by sale its securities in the form of goods before the proprietary interest therein is transferred to it. It will be obvious that it will be more in the interest of a bank to effect sales on account of its party and then apply the sale proceeds towards satisfaction of its dues. A bank should not be made to run risks of falls in prices, or in the alternative, to acquire its party's property at prices deliberately fixed low.



As regards clause (10) the words "employ" and "commission" are in various uses in course of ordinary transactions of business. These words should be clearly defined so that a banking company may not be debarred from using the services of an agent in securing deposits and other kinds of business on terms of commission on the basis of value or volume of business.

The factors that will be taken into consideration in ascertaining as to whether remuneration of an employee is "disproportionate to the resources" of a banking company should also be specified.

## CHAPTER V

### **Doubtful Hypothesis—Basis of the Bill**

The present bill aims high but shoots wide.

The avowed object of the bill is the protection of the interests of depositors through continued maintenance of liquidity of assets and solvency of banking companies. The method adopted to translate this object into realisation is to impose several quantitative standards and leave the conception and execution of qualitative standards to the discretion and judgment of Reserve Bank which is not required (under the provisions of the bill) to guide or warn but only to prosecute and condemn. Reserve Bank is not called upon to frame and circularise rules for determination of qualitative sufficiency, but is supposed to be awarding decisions in its supreme and absolute judgment.

It has been rightly emphasised that the depositors are entitled to protection against the ruinous effects of dishonest and unsound practices indulged in by a banking company. But it has been wrongly assumed that Indian Banking has reached a 'norm' and that putting the banking companies in strait-jackets is

putting the banking house in order. It does not show any comprehension of the fact that when any institution is in course of formation and operates with rough and uncertain resources no quantitative standards can be laid down, and that the only directives that can be issued should take the form of certain qualitative standards that apply irrespective of disparities in economic growth of different countries. In respect of those qualitative requirements which are not capable of unmistakable definition discretion can best be exercised not by persons who view things and affairs from a distance and more or less on a uniform level but by persons who are in intimate association with the shifting details of every aspect of these affairs.

It is hardly possible for an economic theorist to pronounce on the adequacy or inadequacy of any nominal figure serving as 'minimum wage' for the Indian labour in the present uncertain economic circumstances of the country. But it is perfectly possible for him to insist on a minimum standard of living comprising diet yielding a stated minimum of calories and housing providing measurable light and space. Laying down of standards in all other respects cannot be attempted before the economic resources of the country grow not only sufficiently but also on a wide basis.

The framers of the bill have been misled by the

appearance of enormous increase in banking resources. But they appear to have failed to appreciate that the increase is neither sufficiently large for the requirements of 40 crores of people nor sufficiently widely distributed amongst the constituent elements of the banking system. It has not been properly realised that liquidity of assets is not an absolute quality of an asset but is related to the existence of a large and wide market. Liquidity will continue to elude the banking system till the banking growth is large and wide supported by an equally large and wide economic background. It has also failed to be comprehended that in the absence of an organised and resourceful money market the banks will have to continue to play a significant part in helping industrial growth till the economic organisation of the country is properly developed and money market is fully organised. The terror of the abused methods of banking appears to haunt the framers of the bill. But it has failed to be observed that in almost every country the economic level was raised and not lowered in consequence of intense banking activities even though pursued with an accompaniment of gross abuses, and that prescribed standards were enforced only when the economic structure of the country acquired strength and was broadly based. It can properly be questioned as to whether introduction, at an incipient stage, of rigid

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quantitative standards and exercise of impersonal discretion would not have produced the uniform stillness of death though succeeding in avoiding abuses of energetic activities.

A wrongly excited zeal for the protection of depositors' interest has led the framers of the bill to provide for summary liquidation of every misbehaving banking company without arranging for protection of its frozen assets. It seems to have been assumed that destruction of these assets and loss experienced by the depositors will bring home to the depositors the necessity of avoiding unsound banks. But it does not appear to be realised that such wanton losses will ruin the economic structure of the country and make it exceedingly difficult for the carrying on of those economic activities which create or increase the earnings of a depositor. The process of liquidation contemplated in the bill may make a depositor wiser but promises to make him sadder.

### **A Constructive Scheme for Beneficial Legislation**

Legislation that can be of real and effective service to a proper growth of banking in this country in the present economic background should be designed not simply to prosecute and condemn but

to guide, warn, and protect banks. Legislation best calculated to achieve this objective should, in our considered view, be framed on the lines set out below. viz :—

(1) *Capital Structure.*

Every bank should be required to have a paid-up capital and reserves aggregating to a stated percentage (say ten per cent.) of its deposit-liabilities subject to a minimum of Rupees One lac and a maximum of Rupees Twenty lacs.

(2) *Reserve Fund.*

Every bank should be required to build up and maintain a reserve fund to which at least 20 per cent. of the net profits of every year should be appropriated till the fund grows to be equal to the paid-up capital.

The method of calculation of net profits should be prescribed by or under legislation.

(3) *Cash Reserve.*

Every bank should be required to maintain in an account with Reserve Bank or any other bank acting as Agent of Reserve Bank of India at a place where Reserve Bank has no branch of its own, a sum equal to five per cent. of its demand liabilities and two per cent. of its time liabilities.

(4) *Restrictions on assets.*

(a) Every bank should be required to maintain in cash (including cash reserve), gold, or unencumbered approved securities, on the basis of current market valuation, an amount aggregating to not less than 25 per cent. of its total deposit liabilities. The definition of approved securities as set out in the Bill may be adopted.

(b) Subject to due fulfilment of the requirement contained in (a) above, every bank should be required to hold, to the extent of 75 per cent. of its deposit-liabilities, assets in the form of (i) cash (including cash reserve), gold, silver, unencumbered approved securities, (ii) loans and advances secured by pledge of shares and securities (dealt in on any recognised stock-market), pledge or hypothecation of commodities dealt in by traders or manufacturers holding licence from Government or a Govt.-recognised association, pledge or hypothecation of agricultural goods, and documentary bills not outstanding for more than three months in usual course of collection, and (iii) loans and advances against, or discount or purchase of such promissory notes, bills of exchange, and securities as the Reserve Bank is empowered to purchase, discount, or make advances against.

(c) No bank should be permitted to make unsecured loans and advances to its directors or concerns

with which any one or more of them may be connected (through powers of control or management).

(d) No bank should be allowed to make loans and advances to its employees outstanding at any time to the extent of more than five per cent. of its deposit-liabilities.

(e) No bank should be permitted to invest in or make advances against or otherwise acquire immovable property to the extent of more than the amount of its paid-up capital.

(f) No bank should be permitted to make loans and advances to a party or parties connected with each other (through powers of control or management) outstanding at any time to the extent of more than ten per cent. of its total working capital comprising deposits, paid-up capital, reserves, and loans taken from other banks, agents, or persons.

(g) No bank should be permitted to own shares in any company of an amount exceeding twenty per cent. of its own subscribed share capital or twenty per cent. of the subscribed capital of the other company, whichever is less.

No bank should be permitted to acquire interest as a pledgee in shares of a company whose shares the bank itself holds and owns to the extent of more than ten per cent. of subscribed capital of the company concerned.



(h) No bank should be permitted to make unsecured loans and advances outstanding at any time to the extent of more than ten per cent. of its deposit-liabilities.

Loans and Advances should be regarded as 'secured' only if a margin of at least five per cent. is held in the value of securities in the form of gold, silver, lien on deposits with other banks, shares and securities dealt in on a recognised market, commodities dealt in by licensed traders and manufacturers, and documentary bills in usual course of collection; and a margin of 25 per cent. or more is held in the value of other securities.

Arrangements should be made for issue of licences to traders and manufacturers and/or recognition of licences issued under various war-time control orders. Loans and advances made against lien on a bank's own deposits and the corresponding amounts of deposits should not be regarded as assets or liabilities for the purpose of any requirement excepting that relating to Balance Sheet.

(i) Trading on a bank's own account should be prohibited, but any other restriction at this stage of Indian economy, in the direction of promotion or management of any business undertaking will hamper development and growth of economic activities. The restrictions and requirements laid down above will be

sufficient to ensure the solvency of a bank and liquidity of its assets. It may further be provided that no bank should be interested in promotion or management of any business undertaking in a manner that may create liabilities on its own part.

(5) *Management.*

Minimum qualification should be laid down for recruitment of officers of a bank having powers of management of the business or any part of the business of the Bank.

(6) *Protection.*

(a) A scheme of insurance for the protection of depositors should be instituted on the lines in force in America.

(b) Provisions should be made for registration of hypothecation on the lines adopted by Canada.

(c) Reserve Bank should act as liquidator of banks in liquidation but with special powers regarding attachment and disposal of assets.

(d) Special institutions should be created to take over from existing banks assets not permitted under the provisions of the proposed legislation so that a devastating process of liquidation proceedings may be avoided in the same manner as followed in several American and European countries.

(7) *Inspection.*

(a) Reserve Bank should be empowered to call for from any bank in particular and banks in general such periodical and other statements as it may consider necessary or proper.

(b) A system of inspection to be conducted by Reserve Bank at periodical intervals of two to five years should be introduced. No other inspection should be undertaken merely on suspicion and excepting when required on an application made in writing by depositors or share-holders holding at least ten per cent. of total deposits or ten per cent. of paid-up capital and based on specific grounds which the Bank has been unable to explain satisfactorily. A bank should be entitled to compensation in the event of vexatious or harassing proceedings being initiated or conducted in such cases.

If periodical inspection is introduced further provisions for licensing will be superfluous.

(8) *Ancillary provisions.*

(a) Reserve Bank should be permitted to advise and warn a bank in all matters it considers proper or necessary, but it should not be authorised to take any action so long as a bank conforms to the requirements laid down above.

(b) An Advisory Board consisting of represen-



tatives of banks, Central and Provincial Governments, and various Chambers of Commerce should be formed and be in continuous association with Reserve Bank in all matters concerning guidance of and warning to banks, and actions taken against banks.

(c) Periodical reviews of the Banking legislation should be made at intervals of ten years when further quantitative or qualitative requirements may be incorporated if so justified by the prevailing conditions of banking and economic development.

(d) Existing provisions for maintaining a schedule and inclusion of Banks in the Schedule as contained in Reserve Bank of India Act should be deleted. The qualitative standard of a bank may not differ simply because of its being scheduled, and differentiation on the basis of the schedule may create unwarranted prejudice against a non-scheduled bank. Moreover, the original purpose of maintaining a list of scheduled banks was to bring banks within the purview of Reserve Bank's control. This control will now be extended to all banks to the same extent and in an equal degree. The purpose of providing Reserve Bank with funds will be fully served by the above-suggested provisions of legislation. It may be pointed out that the differentiation between "member" banks and "non-member" banks as introduced by the American Federal Reserve Act is not based on any



difference in Capital structures of banks but is based on the jurisdiction of Federal laws. The Federal Reserve Act does not bring within its purview a bank which is registered under the laws of a State unless any such bank elects of its own accord to submit itself to its jurisdiction. A bank which does not so submit itself is called a "non-member" bank. Every bank which is registered under National laws and a bank, registered in a State, which invites Federal jurisdiction (as above indicated) is known as a "member" bank. As a matter of fact, the Federal Reserve Authorities do not take measures to exclude banks from "membership" but devise steps to bring all State banks within the "membership."

In the next chapter we propose to describe and discuss certain measures adopted by the Argentine and America a study of which may help us in a correct appreciation of the proposals we have set out above.

## CHAPTER VI

### **The Argentine Banking Law**

The Banking legislation instituted in the Argentine in 1935 was devised to deal with problems which bear striking closeness to the conditions prevailing in India. In the opening chapter we have quoted several remarks made by A. M. Allen and others regarding the Argentine banking system as obtaining in the years previous to the introduction of the 1935 legislation.

The Argentine banking law took a full and proper measure of the undeveloped economy of the country, and, refrained from placing any restriction on the size of banks in the teeth of opposing suggestions made by Sir Otto Niemeyer who was invited in 1933 to investigate and report on the financial system of the country.

The Argentine banks were only required to appropriate every year ten per cent. of their "liquid profits" to a Reserve Fund till it grew to be equal to at least 50 per cent. of the paid-up capital, or 3 per cent. of "Savings Deposits," whichever was

higher. The other features of the legislation as adopted on 28th March, 1935, were as shown below:—

The Argentine law did not insist on the assets being held in any liquid form other than cash and balances with the Central bank. But these cash balances were required to be equal to 16 per cent. of sight deposits and 8 per cent. of time deposits. The banks with a capital of one million pesos or more were required to keep at least two-thirds of the requisite cash balances in the form of sight deposits with the Central Bank or at branches of the *Banco de la Nacion* in the interior of the country.

A bank was permitted to hold real estate for its own use to the extent of 20 per cent. of its capital and 50 per cent. of its reserves. Properties already held in excess of these limits and that might in future be acquired in satisfaction of debts were to be disposed of within a period not exceeding six years.

No bank was allowed to hold for a period of more than two years after purchase shares or debentures of any company exceeding in amount 20 per cent. of the Capital of the company, or 10 per cent. of its own Capital plus 25 per cent. of its reserves. Existing and future holdings in excess of these limits and those acquired in repayment of debts were to be liquidated within a period of three to four years.

Direct or indirect participation in commercial, agricultural, or industrial enterprises was prohibited.

Administration of the properties of bad debtors for a period of more than two years was not allowed to be carried on excepting with the permission of the Central Bank.

The shares and bonds of other banks were not permitted to be accepted as security for loans to such banks.

Rates of interest on deposits were controlled. Interest on sight deposits was required to be at least three points less than the bank rate and that on Savings deposits was required to be at least one point less than the bank rate. It was also laid down that no interest could be paid on Savings Deposits in excess of 20,000 pesos maintained by private persons, and in excess of 50,000 pesos maintained by co-operative or mutual benefit societies.

A special protection was extended to small depositors in the event of failures of banks. Savings Deposits of private persons not exceeding 5,000 pesos and of co-operative and mutual benefit societies not exceeding 10,000 pesos were given a preferential claim on the general assets of a bank in liquidation.

Provisions were made for submission by banks of periodical returns and statements to the Central Bank, and the Central Bank was required and authorised to



hold inspections of banks. But no action was permitted to be taken excepting in cases of transgressions of law.

### **Realisation of Bank assets**

The Argentine law conferred powers on the Central Bank in the matter of liquidation of banks which failed to comply with the requirements of law. It was, however, fully realised that the banking system had accumulated bad and frozen assets and also assets which would not conform to the provisions of the new law, and an outright application of the said law would result in a general holocaust. It was also appreciated that the disappearance of the existing units of the banking system and emergence of new units would impart such a severe shock to the system that the resulting problem created would not be one of reformation or rehabilitation but one of reconstruction. It was, therefore, considered wise to provide for an arrangement to relieve the banks of their unwelcome assets while introducing a law restricting the nature of assets that a bank could acquire. It was held that mere liquidation of banks would bring about an aggravation rather than a solution of the problem.

A special institution was, therefore, brought into existence on the said 28th March, 1935, and called

*Instituto Movilizador*, or an "Institute for liquidation of Bank Investments." This institute was intended to take over illiquid assets from banks in exchange for "cash and/or redeemable bonds." The Institute, carrying on its operations with a capital of 10 million pesos and Reserves amounting to 380 million pesos, put through large schemes of reorganisation.

Institutions with almost similar objects were earlier set up in Germany in the year 1933.

Still earlier in 1932 when a large number of banks failed in America, a public corporation under the name and style "The Reconstruction Finance Corporation" was established in U.S.A. by an Act passed in February of the same year. The capital of the corporation amounting to 500 million dollars was subscribed by the Federal Government. The Corporation was empowered to issue Government-guaranteed debentures up to about five billion dollars. It is managed by a board consisting of Seven Directors of whom one is the Secretary of the Treasury, the remaining 6 being appointed by the President subject to the approval of the Senate.

The R.F.C. works in close co-operation with the Reserve Banks, and generally, helps banks in acquiring or maintaining liquidity in the following ways, viz. :—

(a) It makes loans to active banks and aids their liquidity.

(b) It makes loans and advances to banks that are unable to pay their debts so that these banks may be enabled either to reorganise themselves or to pay out their depositors with the minimum of delay.

(c) It purchases preference stocks, capital notes, and debentures of banks whose capital structures require to be strengthened.

### **Protection of depositors**

The Argentine law provides for preferential claims on the part of small depositors, as above specified, in the event of liquidation of banks.

But a more effective plan for protection of depositors is contained in the American scheme.

The Federal Deposit Insurance Corporation was established by the Banking Act of 1933 and has since been functioning with certain changes as introduced by the Act of 1935. The F. D. I. C. is a public corporation with a capital of 300 million dollars half of which has been subscribed by the Treasury with the remaining half subscribed by the Federal Reserve Banks. It is managed by a board consisting of three directors.

Every Federal reserve member bank is required to insure its deposits with this corporation. A non-

member bank may arrange for insurance of its deposits provided it complies with certain requirements as prescribed by the corporation. Every insuring bank pays an annual premium at the rate of 1/12th of one per cent. of its total deposits, and, in return, gets the deposits of each of its customers insured up to 5,000 dollars.

### Conclusion

The constructive scheme for legislation that we have drawn up in the preceding chapter has taken into account the peculiarities of the situation as considered by the authorities in the Argentine.

We have, however, provided for formulation of qualitative controls on a wider field than is covered by the Argentine law, as we consider that a country infinitely larger than the Argentine and with a vast and varied population will not easily be amenable to guidance under the direction of Reserve Bank of India. In agreement with the Argentine authorities we consider quantitative controls to be harmful at this stage. But minimum and maximum limits for capital requirements have been stated in our scheme by way of compromise with the strongly-held opinion of the authorities of the country. We have not considered limitations of rates of interest to be called for



inasmuch as, adequate provisions have been made to ensure soundness of a bank's assets.

So long as a bank is not allowed to acquire unsound or doubtful assets, and earnings from loans and advances are not considered improper for a bank, we fail to see why the remuneration that a bank may ask for and a depositor may claim should not be left to the operation of forces of supply and demand at this economic stage of the country. It should, however, be a duty on the part of Reserve Bank of India to maintain continuous touch with the price-level of the country, variations in the cost of different factors of production, and the margin of profit earned in business. The Reserve Bank should study the effects of these factors on interest charged and allowed by banks and also the effect of such interest on the behaviour of the above-considered factors, and advise banks from time to time as to maximum and minimum rates of interest that Reserve Bank considers to be just or proper for smooth economic development of the country.

We have not adopted the Argentine method of protecting small depositors as we have pleaded for introduction of a comprehensive scheme of insurance of deposits.

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## **APPENDIX A**

### **BANKING COMPANIES BILL**

L. A. Bill No. 28 of 1946

*A Bill to consolidate and amend the law relating to  
Banking Companies*

WHEREAS it is expedient to consolidate and amend  
the law relating to banking companies;

It is hereby enacted as follows:—

#### **PART I**

##### **Preliminary**

1. *Short title, extent and commencement—*

(1) This Act may be called the Banking Companies Act, 1946.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. *Application of other laws not barred—*The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation

of, the Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

3. *Act not to apply to co-operative banks*— Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in British India relating to Co-operative Societies.

4. *Power to suspend operation of Act*.— (1) The Central Government, if on a representation made by the Reserve Bank in this behalf is satisfied that it is expedient so to do, may by notification in the official Gazette suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf, may by order in writing exercise the powers of the Central Government under sub-section (1), and where he does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the official Gazette.

(3) The Central Government may, by notification

in the official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub-section (2) for such period, not exceeding sixty days at any one time, as it thinks fit.

5. *Definitions*—In this Act, unless there is anything repugnant in the subject or context,—

(a) “approved securities” means securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c), or clause (d) of Section 20 of the Indian Trusts Act, 1882 (II of 1882) and such securities of, or fully guaranteed by, Indian States as the Reserve Bank may be authorised to purchase under clause (8) of Section 17 of the Reserve Bank of India Act, 1934 (II of 1934);

(b) “banking” means the accepting of deposits repayable on demand;

(c) “banking company” means any company which may be wound up under the Indian Companies Act, 1913 (VII of 1913) and which transacts the business of banking in British India;

(d) “Court” means the Court having jurisdiction under the Indian Companies Act, 1913;

(e) “demand liabilities” means liabilities which must be met on demand, and “time liabilities” means liabilities which are not demand liabilities;

(f) “managing agent” means a person, firm or company entitled to the management of the whole



affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called;

*Explanation*—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of this Act.

(g) “prescribed” means prescribed by rules made under this Act;

(h) “registrar” has the same meaning as in clause (15) of sub-section (1) of Section 2 of the Indian Companies Act, 1913;

(i) “Reserve Bank” means the Reserve Bank of India;

(j) “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

## PART II

6. *Forms of business in which banking companies may engage*—(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:—

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferrable or negotiable or not; the granting and issuing of letters of credit; traveller's cheques and circular notes; the buying and selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(b) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent of a

company including the power to act as attorneys and to give discharge and receipts;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue:

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise ;

(j) taking or otherwise acquiring and holding

shares in any other company having objects similar to those of the company;

(*k*) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance, subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful objects;

(*l*) the acquisition, construction, maintenance and alteration of any building or work necessary or convenient for the purposes of the company;

(*m*) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(*n*) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section:

(*o*) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(*p*) any other form of business which the Central Government may by notification in the official Gazette



specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company whether incorporated in or outside British India shall engage in any form of business other than those referred to in sub-section (1).

7. *Use of words "bank", "banker", "banking"*—(1) After the expiry of two years from the commencement of this Act, no company shall carry on the business of banking in British India unless it uses as part of its name at least one of the words "bank", "banker" or "banking" :

Provided that nothing in this sub-section shall apply to any scheduled bank in existence as such on the 1st day of January, 1946.

(2) Every company which uses as part of the name under which it carries on business any of the words "bank", "banker" or "banking" shall, notwithstanding that it may not for any reason be a banking company as defined in clause (c) of section 5, be deemed to be a banking company and be subject to the provisions of this Act as such :

Provided that nothing in this sub-section shall apply to any association of banking companies formed for the protection of their mutual interests and registered under Section 26 of the Indian Companies Act, 1913 (VII of 1913).

8. *Prohibition of Trading*—Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods or engage in any trade or buy or sell or barter goods for others, otherwise than in connection with bills of exchange received for collection or negotiation:

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the 1st day of January, 1946, so however, that the said business shall be completed before the expiry of one year from the commencement of this Act.

*Explanation*—For the purposes of this section, “goods” mean every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie.

9. *Disposal of non-banking assets*—Notwithstanding anything contained in sections 6 and 8, where any banking company acquires or has acquired any assets in satisfaction of its claims in the course of its banking business, being assets in respect of which it is not lawful under the said sections for the company to transact business, it may, within a period of seven years from the date of its acquisition of such assets or from the commencement of this Act, whichever is later, deal or trade in such assets for the pur-

pose of facilitating the realisation thereof, and shall, before the expiration of the said period, dispose of such assets:

Provided that the Reserve Bank may in any particular case extend the said period by such period not exceeding three years as it thinks fit where it is satisfied that such extension would be in the interest of the depositors of the banking company.

10. *Prohibition of employment of managing agents and restrictions on certain forms of employment—* No banking company, whether incorporated in or outside British India, which carries on business in British India, shall employ, or be managed by, a managing agent, or any person whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company, or whose remuneration is on a scale disproportionate, according to the normal standards prevailing in banking business, to the resources of the company, or any person having a contract with the company for its management for a period exceeding five years at any one time:

Provided that the said period of five years shall, in relation to contracts subsisting on the 1st day of July, 1944, be computed from that date:

Provided further that any contract with the company for its management may be renewed or extended

for a further period not exceeding five years at a time if and so often as the directors think fit.

11. *Restrictions on commencement of business and conditions for carrying on business*—(1) Notwithstanding anything contained in Section 103 of the Indian Companies Act, 1913 (VII of 1913) no banking company in existence on the 1st day of January, 1946, shall, after the expiry of two years from the commencement of this Act or such further period not exceeding one year as the Reserve Bank, having regard to the interest of the depositors of the company, may think fit in any particular case to allow, carry on business in British India, and no further banking company shall after the commencement of this Act commence or carry on business in British India, unless it has a paid-up capital and reserves of an aggregate value—

(i) of not less than twenty lakhs of rupees, if it has a place of business in India outside the province in which it has its principal place of business or if it has its principal place of business elsewhere than in British India, or

(ii) in a case to which clause (i) does not apply, of not less than—

(a) five lakhs of rupees if it has any place of business at Bombay or Calcutta, *plus*

(b) two lakhs of rupees in respect of each town



(other than Bombay or Calcutta) having a population of over 100,000 in which it has any place of business, *plus*

(c) ten thousand rupees in respect of each other town, village or similar locality in which it has any place of business:

Provided that in the case of a banking company to which only sub-clause (c) of clause (ii) is applicable the minimum aggregate value of paid-up capital and reserves for the purposes of this sub-section shall be one lakh of rupees:

Provided further that no banking company shall be required to have paid-up capital and reserves exceeding an aggregate value of twenty lakhs of rupees.

*Explanation*—In this sub-section and sub-section (2), "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the company concerned.

(2) A banking company incorporated elsewhere than in British India or the United Kingdom shall be deemed to have complied with the provisions of sub-section (1) only if it keeps deposited with the Reserve Bank an amount not less than the minimum aggregate value of paid-up capital and reserves required in its case under that sub-section either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

(3) No banking company, whether incorporated in or outside British India, if incorporated on or after the 15th day of January 1937, shall carry on business in British India unless it satisfies the following conditions, namely:—

(a) that the subscribed capital of the company is not less than half the authorised capital, and the paid-up capital is not less than half the subscribed capital, and

(b) that the capital of the company consists of ordinary shares only, or ordinary shares and such preference shares as may have been issued before the 1st day of July, 1944 only, and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholder, whether a preference shareholder or an ordinary shareholder, to the paid-up capital of the company.

(4) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

12. *Restriction on commission, brokerage, discount, etc. on sale of shares*—Notwithstanding anything to the contrary in Sections 105 and 105A of the Indian Companies Act, 1913 (VII of 1913), no

banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any share issued by it, any amount exceeding in the aggregate two and one-half per cent. of the paid-up value of the said share.

13. *Prohibition of charge on unpaid capital*—No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

14. *Reserve fund*—Every banking company not being a scheduled bank shall maintain a reserve fund, and shall, out of the declared profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

15. *Cash reserve*—Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash with itself or in an account opened with the Reserve Bank, or partly in cash with itself and partly in such account, a sum equivalent to at least one and a half per cent. of its time liabilities and five per cent. of its demand liabilities and shall file with the Reserve Bank before the tenth day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding



month with particular of its time and demand liabilities on each such Friday.

16. *Restriction on nature of subsidiary companies*—(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor, trustee or otherwise, or such other purposes as are incidental to the business of banking.

(2) Save as provided in sub-section (1), a banking company shall not, after the expiry of one year from the commencement of this Act, hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding twenty per cent. of the issued and subscribed share capital of that company or twenty per cent. of its own issued and subscribed share capital and reserves, whichever is less.

Provided that nothing in this sub-section shall apply to shares held by a banking company before the 15th day of January, 1937.

17. *Restrictions on loans and advances*—Notwithstanding anything to the contrary contained in Section 54A of the Indian Companies Act, 1912 (VII of 1913), on banking company shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to its directors



or to firms or companies in which it or any of its directors is interested as partner, director or managing agent.

18. *Licencing of banking companies*—(1) 'Save as hereinafter provided no company shall carry on banking business in British India unless it holds a licence granted by the Reserve Bank in such behalf.

(2) Until the expiry of five years from the commencement of this Act the provisions of sub-section (1) shall not apply to any company which is carrying on banking business in British India at the commencement of this Act.

(3) Notwithstanding anything contained in sub-section (1), a banking company which is at the commencement of this Act a scheduled bank shall not be required, so long as it continues to be a scheduled bank, to hold a licence under that sub-section:

Provided that, after the expiry of five years from the commencement of this Act, the provisions of this sub-section shall continue to apply to a scheduled bank, being a company incorporated elsewhere than in British India or the United Kingdom, only for so long as the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in British India.

(4) Before granting any licence under sub-section (1), the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that all or any of the following conditions are fulfilled, namely:—

(a) that the company is in a position to pay its depositors in full as their claims accrue;

(b) that the affairs of the company are not being conducted to the detriment of the interest of its depositors;

(c) in the case of a company incorporated elsewhere than in British India or the United Kingdom, that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in British India, and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside British India.

(5) The Reserve Bank may—

(a) cancel any licence granted under this section where any of the conditions set out in sub-section (4) on the fulfilment of which it required to be satisfied when granting the licence ceases to be fulfilled, or if the company ceases to carrying on banking business in British India or goes into liquidation;

(b) at any time after granting a licence under this section require that any of the said conditions on

the fulfilment of which it did not require to be satisfied when granting the licence shall be fulfilled to its satisfaction within such time as it may specify and if the condition is not so fulfilled, cancel the licence.

(6) No banking company shall open a new branch of its business without obtaining prior permission in writing from the Reserve Bank; and before giving any such permission the Reserve Bank may require to be satisfied that the public interest will be served by the opening of the branch.

19. *Maintenance of a percentage of assets*—(1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price an amount which shall not at the close of business on any day be less than twenty-five per cent. of the total of its time and demand liabilities in British India.

*Explanation*—For the purposes of this section liabilities shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the company or the amount of any loan taken from the Reserve Bank.

(2) In computing the amount for the purposes of sub-section (1), the deposit required under sub-

section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated elsewhere than in British India or the United Kingdom and any balance maintained by the company with the Reserve Bank, including in the case of a scheduled bank the balance required under sub-section (1) of Section 42 of the Reserve Bank of India Act, 1934 (II of 1934), to be so maintained, shall be deemed to be cash maintained.

(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than ten days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its time and demand liabilities at the close of business on each Friday during the month, or if any Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

20. *Assets in British India*—(1) At the close of the last working day of every quarter the assets in British India of every banking company shall not be less than seventy-five per cent. of its time and demand liabilities in British India.



(2) Every banking company shall within one month from the end of every quarter submit to the Reserve Bank a return in the prescribed form and manner of such assets and liabilities as at the close of the last working day of the previous quarter.

(3) For the purposes of this section, assets in British India shall be deemed to include such promissory notes, bills of exchange and securities as the Reserve Bank is under the Reserve Bank of India Act, 1934 (II of 1934), empowered to purchase, discount or make advances against, and export bills drawn in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf.

(4) In this section "quarter" means a period of three months ending on the last day of March, June, September or December.

21. *Return of unclaimed deposits.*—Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in British India which have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account :

Provided that in the case of moneys deposited for a fixed period the said term of ten years shall be

reckoned from the date of the expiry of such fixed period.

22. *Monthly returns and power to call for other returns and information.*—(1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in British India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881, (XVI of 1881) at the close of business on the preceding working day.

(2) The Reserve Bank may require a banking company at any time to furnish it with statements and information relating to its business, and without prejudice to the generality of the foregoing power, may call for information every half-year regarding the classification of advances and investments of banking companies in respect of industry, commerce and agriculture.

23. *Power to publish information.*—The Reserve Bank, if it considers it in the public interest so to do, may publish any information obtained by it under section 22 in such consolidated form as it thinks fit.

24. *Accounts and balance sheet.*—(1) At the expiration of each calendar year every banking company incorporated in British India, in respect of all

business transacted by it, and every banking company incorporated outside British India which carries on business in British India, in respect of all business transacted through its branches in British India, shall prepare with reference to that year a balance sheet and profit and loss account as on the last working day of the year in the Forms set out in the Schedule or as near thereto as circumstances admit.

(2) The balance sheet and profit and loss account shall be signed—

(a) in the case of a banking company incorporated in British India by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) in the case of a banking company incorporated outside British India, by the manager or agent of the principal office of the company in British India.

(3) Notwithstanding that the balance sheet of a banking company is under sub-section (1), required to be prepared in a form other than the form marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913), the provisions of that Act relating to the balance sheet and profit and loss account of a company shall, in so far as they are not inconsis-

tent with this Act, apply to the balance sheet or profit and loss account, as the case may be, of a banking company.

25. *Audit.*—(1) The balance sheet and profit and loss account prepared in accordance with section 24 shall be audited—

(a) in the case of a banking company incorporated in British India, by an auditor holding a certificate under section 144 of the Indian Companies Act, 1913 (VII of 1913), entitling him to act as an auditor of companies ;

(b) in the case of a banking company incorporated outside British India, either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the aforesaid Act.

26. *Submission of returns.*—The accounts and balance sheet referred to in section 24 together with the auditor's report shall be published in the prescribed manner, and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer :



Provided that the Central Government may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

27. *Copies of balance sheets and accounts to be sent to registrar.*—(1) Where a banking company in any year furnishes its balance sheet and accounts in accordance with the provisions of section 26, it may or when it is a private company as defined in the India Companies Act, 1913 (VII of 1913), shall, at the same time send to the registrar three copies of such balance sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company, to file copies of the balance sheet and accounts with the registrar as required by sub-section (1) of section 134 of the said Act, and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

(2) When in pursuance of sub-section (2) of section 22 the Reserve Bank requires any additional statement or information in connection with the balance sheet and accounts furnished to it under section 26, the banking company shall, when supplying such statement or information send a copy thereof to the registrar.

28. *Display of audited balance sheet by com-*

*panies outside British India.*—Every banking company incorporated outside British India which carries on business in British India, shall, not later than the first Monday in August of any year in which it carries on business in British India, display in a conspicuous place in its principal office and in every branch office in British India a copy of its last audited balance sheet and profit and loss account prepared under section 24, and shall keep the copy so displayed until replaced by a copy of the subsequent balance sheet and profit and loss account so prepared.

29. *Accounting provisions of this Act not retrospective.*—Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

30. *Inspection.*—(1) Without prejudice to the provisions contained in sections 137, 138 and 139 of the Indian Companies Act, 1913 (VII of 1913), the Central Government may, if it has any reason to believe that the interests of the depositors of a banking company are in danger or that a banking company is unable to meet its obligations or has made default in

complying with any of the provisions of this Act or that a contravention of any provision of this Act has been or is likely to be committed by a banking company or any officer of a banking company or that it is otherwise desirable or necessary, direct the Reserve Bank to inspect the banking company and its books and accounts and report thereon to the Central Government.

(2) It shall be the duty of every director or other officer of the banking company to produce to any person authorised by the Reserve Bank to make an inspection under sub-section (1) all such books, accounts and other documents in his custody or power relating to the affairs of the banking company as the said person may require of him.

(3) Any person making an inspection under sub-section (1) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

(4) On receipt of a report under sub-section (1), the Central Government, if it is of opinion after considering the report that the affairs of a banking company are being conducted to the detriment of the interest of its depositors, may—

(a) by order in writing prohibit the banking company from receiving fresh deposits.



(b) direct the Reserve Bank to apply for the winding up of the banking company :

Provided that the Central Government may cancel or modify any order passed under this subsection upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

### PART III.

#### **Suspension of Business and Winding up of Banking Companies**

31. *Suspension of business.*—(1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period up to a total period not exceeding three months in all.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve



Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted.

Provided that the Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report.

32. *Winding up by Court.* (1) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1943 (VII of 1913), and without prejudice to its powers under section 31, the Court shall order the winding up of a banking company if it is unable to pay its debts, and the Court shall also order the winding up of a banking company if the Reserve Bank, which is hereby authorised so to do, applies in this behalf to the Court on either of the following grounds, namely:—

(a) that it appears from the results of an inspection made under section 30 that the affairs of the company are being conducted to the detriment of the interest of its depositors, or

(b) that the company has failed to comply with the provisions of section 19 or section 20 and with a notice served upon it under sub-section (5) of section 40.

(2) Without prejudice to the provisions contained in section 163 of the aforesaid Act, a banking company shall be deemed to be unable to pay its debts

if it has refused to meet any lawful demand for payment made at any of its office or branches within two working days if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within four working days if such demand is made elsewhere.

(3) A copy of every application by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the Registrar.

33. *Reserve Bank to be official liquidator.*—Notwithstanding anything to the contrary contained in section 175 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank shall be appointed as the official liquidator in relation to the winding up by Court of a banking company.

34. *Stay of proceedings.*—Notwithstanding anything to the contrary contained in section 173 of the Indian Companies Act, 1913 (VII of 1913) the Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

35. *Report of liquidator.*—Notwithstanding anything to the contrary contained in section 177B of

the Indian Companies Act, 1913 (VII of 1913), where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the Court within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the Court to order the payment of a preliminary dividend if sufficient assets are available.

36. *Power to dispense with meetings of creditors, etc.*—Notwithstanding anything to the contrary contained in sections 178A and 183 of the Indian Companies Act, 1913 (VII of 1913), the Court may in the proceedings for winding up a banking company dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

37. *Booked depositors' credits to be deemed proved.*—Notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act, 1913 (VII of 1913), the Court shall deem that the amounts shown in the books of a banking company, as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the official liquidator shows that there is reason for doubting any particular entry.

38. *Restriction on voluntary winding up.*—Notwithstanding anything to the contrary contained in Section 203 of the Indian Companies Act, 1913 (VII of 1913), no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue and without prejudice to the provisions contained in sections 218 and 220 of that Act, the Court shall, on the application of the Reserve Bank, order the winding up of the company by the Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

39. *Restriction on amalgamation, etc.*—(1) Notwithstanding anything to the contrary in section 153A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall, except with the previous consent in writing of the Reserve Bank, amalgamate or enter into any scheme of arrangement or reconstruction with any other banking company.

(2) The Reserve Bank shall not give its consent to any amalgamation or scheme as aforesaid unless it is reasonably satisfied that each of the banking companies concerned therein is and will be able to pay its debts as they fall due.



## PART IV

**Miscellaneous**

40. *Penalties.*—(1) Whoever in any return, balance sheet or other document required by or under or for the purposes of any provision of this Act, wilfully makes as statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person refuses to produce any book, account or other document which under sub-section (2) of section 30 it is his duty to produce, or to answer any question relating to the business of a banking company which he is asked by a person making an inspection under that section, he shall be liable to a fine which may extend to five hundred rupees in respect of each offence and if he persists in such refusal, to a further fine which may extend to fifty rupees for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (4) of section 30, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to

prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of or made under this Act, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one with a further fine not exceeding fifty rupees for every day during which it continues.

(5) Without prejudice to the provisions of subsection (4), if any banking company fails to comply with the provisions of section 19 or section 20, the Reserve Bank shall by notice in writing make a demand to the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do, the Reserve Bank may apply to the Court for the winding up of the banking company.

41. *Cognizance of offences.*—No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under section 40.

42. *Application of fines.*—A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

43. *Power of Central Government to make rules.*—(1) The Central Government may, after consultation with the Reserve Bank, make rules consistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted.

(3) All rules made under this section shall be published in the official Gazette and shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published.

44. *Amendment of section 17, Act II of 1934.*—In section 17 of the Reserve Bank of India Act, 1934,

to clause (15A) the following shall be added, namely :—

“and under the Banking Companies Act, 1946”.

45. *Amendment of section 42, Act II of 1934.*—  
For sub-section (6) of section 42 of the Reserve Bank of India Act, 1934, the following sub-section shall be substituted, namely :—

“(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,—

(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in British India and which—

(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and

(iii) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913 (VII of 1913), or a corporation or a company incorporated by or under any law in force in any place outside British India :

(b) direct the exclusion from that Schedule of any scheduled bank,—

(i) the aggregate value of whose paid-up capital



and reserves becomes at any time less than five lakhs of rupees, or

(ii) which is, in the opinion of the Bank after making an inspection under section 30 of the Banking Companies Act, 1946, conducting its affairs to the detriment of the interest of its depositors, or,

(iii) which goes into liquidation or otherwise ceases to carry on banking business:

Provided that the Bank may on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under sub-clause (i) or sub-clause (ii) of clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs.

(7) In sub-section (6) the expression 'value' means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of that sub-section."

46. *Repeals.*—(1) All the provisions contained in Part XA of the Indian Companies Act, 1913 (VII of 1913), are hereby repealed.

(2) The Banking Companies (Inspection) Ordinance, 1946 (IV of 1946), is hereby repealed.

## THE SCHEDULE

(See Section 24)

### FORM A

#### FORM OF BALANCE SHEET

.....Bank Ltd.

*Balance Sheet as at.....December.....*

#### CAPITAL & LIABILITIES

Rs. A. P.      Rs. A. P.

#### CAPITAL (a)—

Authorised Capital....Shares of  
Rs.....each      ..      ..

\_\_\_\_\_

Issued Capital....Shares of  
Rs.....each      ..      ..

\_\_\_\_\_

Subscribed Capital....Shares of  
Rs.....each      ..      ..

\_\_\_\_\_

|   | Rs. A. P. | Rs. A. P. |
|---|-----------|-----------|
| Amount called up at Rs.....per<br>share .. .. .                             |           |           |
|   | _____     | _____     |
| Less calls unpaid .. .. .   |           |           |
|   | _____     | _____     |
| Add. forfeited shares .. .. .   |           |           |
|   | _____     | _____     |
| RESERVE FUNDS (b)   |           |           |
| DEPOSITS & OTHER ACCOUNTS:  |           |           |
| Fixed Deposits .. .. .  |           |           |
| Savings Bank Deposits .. .. .   |           |           |
| Current Accounts and contingency<br>(unadjusted) accounts .. .. .           |           |           |
|   | _____     | _____     |
| Due to other Banks, Agents, etc.  |           |           |
| (i) In British India .. .. .  |           |           |
| (ii) Outside British India .. .. .  |           |           |
|   | _____     | _____     |
| Particulars:  |           |           |
| (i) Secured (stating the nature<br>of security) .. .. .                     |           |           |
| (ii) Unsecured .. .. .  |           |           |
| Bills payable .. .. .   |           |           |
| Bills for collection being bills<br>receivable as <i>per contra</i> .. .. . |           |           |
| (i) Payable in British India .. .. .  |           |           |

Rs. A. P.    Rs. A. P.

(ii) Payable outside Br. India

OTHER LIABILITIES (to be specified) (c) .. ..

Acceptances, endorsements and other obligations *per contra*, ..

PROFIT AND LOSS :

Balance as per previous balance sheet .. ..

Less appropriation thereof balance brought forward .. ..

Profit since last balance sheet ..

CONTINGENT LIABILITIES (d) ..

TOTAL ..

## PROPERTY AND ASSETS

Rs. A. P.    Rs. A. P.

CASH :

In hand and with Reserve Bank (including foreign currency notes) .. ..

Balances with other banks (show-



Rs. A. P.    Rs. A. P.

ing whether on deposit or current account)—

- (i) In British India ..
- (ii) Outside British India ..

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#### MONEY AT CALL AND SHORT NOTICE

Bills Discounted (other than Treasury Bills of the Central and Provincial Governments)—

- (i) Payable in British India
- (ii) Payable outside Br. India

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INVESTMENTS (stating mode of valuation, *e.g.*, cost or market value)—

- (i) Government of India and Trustee Securities including Treasury Bills of Government of India and Provincial Governments
- (ii) Shares (showing separately shares fully paid-up and partly paid-up) ..
- (iii) Debentures or Bonds ..
- (iv) Other investments (to be

|     |            |    | Rs. A. P. | Rs. A. P. |
|-----|------------|----|-----------|-----------|
|     | specified) | .. | ..        |           |
| (v) | Gold       | .. | ..        |           |
|     |            |    | _____     | _____     |

LOANS, ADVANCES, CASH CREDITS  
AND OVERDRAFTS (less provision  
for bad and doubtful debts)

|      |                       |    |       |       |
|------|-----------------------|----|-------|-------|
| (i)  | In British India      | .. |       |       |
| (ii) | Outside British India | .. | _____ | _____ |

PARTICULARS:

- (i) Debts considered good in respect of which the bank is fully secured ..
- (ii) Debts considered good for which the bank holds no other security than the debtors personal security
- (iii) Debts considered doubtful or bad not provided for ..
- (iv) Debts due by directors or officers of the bank or any of them either severally or jointly with any other persons ..
- (v) Debts due by companies or firms in which the

|   | Rs. A. P. | Rs. A. P. |
|---|-----------|-----------|
| directors of the bank are interested as directors, partners or managing agents .. ..  |           |           |
| (vi) Maximum loans including temporary advances made at any time during the year to directors or managers of the company ..   |           |           |
| (vii) Maximum amount of loans, including temporary advances granted during the year to the companies or firms in which the directors of the bank are interested as directors, partners or managing agents .. .. |           |           |
| (viii) Due from banks ..  |           |           |
| Bills for collection being bills receivable as per <i>contra</i> —  |           |           |
| (i) Payable in British India ..   |           |           |
| (ii) Payable outside Br. India  |           |           |
| Acceptances, endorsements and other obligations per <i>contra</i> ..  |           |           |

|   | Rs. A. P. | Rs. A. P. |
|---|-----------|-----------|
| Premises less depreciation (e) ..   |           |           |
| Furniture and Fixture less depreciation (e) .. ..                                       |           |           |
| Other assets (to be specified) (f)  |           |           |
| Non-banking Assets acquired in satisfaction of claims (stating mode of valuation) .. .. |           |           |
| PROFIT AND LOSS .. ..   |           |           |
|   |           | <hr/>     |
| TOTAL .. ..   |           | <hr/>     |

## NOTES

(a) Capital :—

- (i) The various classes of capital, if any, should be distinguished.
- (ii) Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.
- (iii) Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, *e.g.*, Issued and Subscribed Capital.....Shares of Rs.....Paid-up.



(iv) In the case of banking companies incorporated outside British India, the amount of deposit kept with the Reserve Bank of India under sub-section (2) of Section 11 of the Banking Companies Act, 1946 should be shown under this head; the amount however should not be extended to the outer column.

(b) The reserve fund maintained by non-scheduled banks under section 14 of the said Act should be shown separately.

(c) Under this heading are to be included such items as the following to be shown under separate headings suitably described: pension or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.

(d) These should be classified under the following categories—

- (i) Claims against the banking company not acknowledged as debit.
- (ii) Money for which the bank is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.

- (iii) Arrears of cumulative preference dividends.
- (iv) Liability on Bills of Exchange re-discounted.
- (v) Liability on account of outstanding Forward Exchange Contracts.

(e) Bank premises wholly or partly occupies for the purposes of business should be shown against "Premises depreciation." In the case of fixed capital expenditure, the original cost, and additions thereto and deductions there from during the year should be stated as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance sheet after the first balance sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made.

(f) Under this heading may be included such items as the following which must be shown under headings suitably described: preliminary formation and organisation expenses, development expenditure, commission and brokerage on shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(g) Value shown shall in no case exceed market value.

## FORM B

## FORM OF PROFIT AND LOSS ACCOUNT

*Profit and Loss Account for the year ended.....  
December.....*

## EXPENDITURE

|  | Rs. A. P. |       |       |
|--|-----------|-------|-------|
| Interest paid on deposits .. ..                        | ..        | ..    | ..    |
| Salaries and Allowances .. ..                          | ..        | ..    | ..    |
| Directors' Fees and Allowance .. ..                    | ..        | ..    | ..    |
| Provident Fund .. ..                                   | ..        | ..    | ..    |
| Rent, Taxes, Insurance, Lighting, Law<br>Charges .. .. | ..        | ..    | ..    |
| Postage and Telegrams .. ..                            | ..        | ..    | ..    |
| Auditors' Fees .. ..                                   | ..        | ..    | ..    |
| Depreciation on Bank's Property .. ..                  | ..        | ..    | ..    |
| Repairs to Bank's Property .. ..                       | ..        | ..    | ..    |
| Stationery, Printing, Advertisements, etc. ..          | ..        | ..    | ..    |
| Other Expenditure .. ..                                | ..        | ..    | ..    |
| Balance of Profit .. ..                                | ..        | ..    | ..    |
|  |           | _____ | _____ |
| TOTAL .. ..  | ..        | _____ | _____ |

## INCOME

Rs. A. P.

|   |    |    |
|---|----|----|
| Interest, Discount, Exchange, Commission,<br>etc. (less provision made during the year<br>for bad and doubtful debts) .. .. | .. | .. |
| Transfer from contingencies account ..  | .. | .. |
| Profit made on sale or revaluation of invest-<br>ments, Gold and Silver .. ..   | .. | .. |
| Miscellaneous .. ..   | .. | .. |
| Loss (if any) .. ..   | .. | .. |

TOTAL .. ..

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**STATEMENT OF OBJECTS AND REASONS**

The provisions of law relating to banking companies at present form a subsidiary portion of the general law applicable to companies and are contained in Part XA of the Indian Companies Act, 1913. These provisions, which were first introduced in 1936, and which have undergone two subsequent modifications, have proved inadequate and difficult to administer. Moreover while the primary objective of Companies Law is to safeguard the interests of the



stock-holder, that of banking legislation should be the protection of the interests of the depositor. It has therefore been felt for some time that separate legislation was necessary for the regulation of banking in India. This need has become the more insistent on account of the considerable development that has taken place in recent years in banking, especially the rapid growth of banking resources and of the number of banks and branches. Regard must also be had to the fact that the banking system is likely in the post-war period to be more vulnerable by reason of the great expansion, both quantitatively and relatively, that has taken place in demand deposits, as compared with time deposits, during the war years. The enactment of a separate comprehensive measure has in consequence now become imperative.

With this object in view a Bill to amend the law relating to Banking Companies was introduced in the Legislative Assembly in November, 1944 and was subsequently circulated for eliciting public opinion through the Provincial Governments. In the ensuing Budget Session of the Assembly the bill was referred to a Select Committee which was due to meet in October, 1945, but it lapsed before its consideration by the Committee. The present bill is based on the measure introduced in 1944, with certain modifications which have suggested themselves on considera-

tion of the opinions and criticisms received on that Bill. The main features of the Bill are as follows:—

(i) A simple definition of banking with the object of limiting the scope of the legislation to institutions in which the funds are deposited primarily to ensure their safety and ready withdrawability,

(ii) Prescription of minimum capital standards;

(iii) Prohibition of trading with a view of eliminating non-banking risks;

(iv) Inclusion in the scope of the legislation of banks incorporated or registered outside British India;

(v) Introduction of a comprehensive system of licencing of banks;

(vi) Provision of an expeditious procedure for liquidation;

(vii) Inspection of the books and accounts of a bank by the Reserve Bank when necessary;

(viii) Empowering the Central Government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors;

(ix) Prescription of a special form of balance sheet and conferring of powers on the Reserve Bank to call for periodical returns.

Brief explanatory notes on the several clauses are given in the annexed notes on clauses and a memoran-

dum is also attached explaining the changes made in the 1944 Bill.

New Delhi :

A. ROWLANDS.

The 26th February, 1946.

### NOTES ON CLAUSES

*Clause 1 (i)*—The Bill is confined to companies carrying on the business of banking. It would be impracticable to include within its scope all institutions and individuals dealing in credit in view of the complex credit structure of the country and the fact that money-lending is an item of provincial legislation.

*Clause 2*—Except in matters pertaining to banking it is desirable that the Indian Companies Act should continue to be applicable to banking companies.

*Clause 3*—It is unnecessary to include co-operative banks which are governed by special legislation.

*Clause 4*—The object underlying this clause is that in cases of genuine emergency, *e.g.*, a general run on all banks or a run on some bank in a particular area, Government should have power to suspend the operation of the Act after considering the recommendations of the Reserve Bank. The suspension of clause 19 will, for instance, enable the Reserve Bank to give an advance to tide over a banking crisis

against liquid assets maintained by banks under that clause.

*Clause 5*—The present definition of banking in Section 277F of the Indian Companies Act gives rise to administrative difficulties, particularly in respect of the words "principal business" in determining whether a company comes within its scope. The new definition is intended to connect banking definitely with the acceptance of demand deposits and to confine the scope of the legislation to those institutions in which funds are deposited primarily to ensure their safety and ready withdrawability. It has the further advantage that it automatically excludes non-banking companies which accept only time deposits or borrow money at all.

*Clause 6*—Based on Sections 277F and 277G(2) of the Indian Companies Act, 1913.

*Clause 7*—Sub-clause (1) is considered necessary for the protection of the interests of the depositors while sub-clause (2) embodies in substance the existing proviso to Section 277F of the Indian Companies Act, 1913.

*Clause 8*—This is intended to prohibit a bank from engaging directly or indirectly in trading activities and undertaking trading risks in addition to ordinary banking risks. Certain banks have been



found to engage in such activities under the guise of agency business.

*Clause 9*—It is not intended to prohibit a bank from conducting the management of industrial concerns or other non-banking assets which it may have acquired in satisfaction of its claims, provided that such assets are disposed of within a period of seven years. This period should be sufficient for the realisation of such non-banking assets.

*Clause 10*—This embodies the new section 277HH added to the Indian Companies Act, 1913, by the Indian Companies (Amendment) Act, 1944, supplemented by a provision disallowing the employment of managing agents under some other name, or on a salary disproportionate to the resources of the bank.

*Clause 11*—One of the chief defects of the Indian banking system is the weak and vulnerable capital structure of the vast majority of banks, as evidenced by the fact that during the years 1934-43, no less than 669 banking companies were liquidated or wound up, most of which possessed very poor capital resources. Even the minimum of Rs. 50,000 prescribed by the Indian Companies Act for banks incorporated after the 15th January, 1937, is low as compared with many other countries, notwithstanding the lower standard of wealth in India. Another defect in the present banking system is the undue concentration

of banking offices in a few cities and towns whereas a very large number of small towns have no banking facilities. Small banks with low capital have also a tendency to open branches in large towns which have already sufficient banking facilities. Clause 11 (1) seeks to remedy these defects. In the case of banking companies incorporated outside British India the provisions as regards capital do not afford any real protection, hence the safeguarding provisions of sub-clause (2).

Sub-clause (3) follows the recently enacted section 277L (2) of the Indian Companies Act.

*Clause 12*—This seeks to impose a limitation on the commission payable on the issue of shares by the bank.

*Clause 13*—This reproduces Section 277J of the Indian Companies Act.

*Clause 14*—This embodies sub-sections (1) and (2) of Section 277K of the Indian Companies Act. Sub-section (3) of that section has been omitted in view of clause 19 of the Bill which provides for a general reserve.

*Clause 15*—This follows Section 277L (1) of the Indian Companies Act except that the prescribed returns are to be filed with the Reserve Bank and not the Registrar.

Sub-section (2) of Section 277L, which defines the terms "demand liabilities" and "time liabilities," has been removed to clause 5 of the Bill.

*Clause 16*—The clause is intended to prevent banks from carrying on trading activities by acquiring a controlling interest in non-banking companies. It follows the lines of Section 277M of the Indian Companies Act with the modification that the limitation on the amount of investment by a banking company in the shares of a non-banking company has been based with reference to the share capital of the banking company as well as of the company whose shares are purchased and the percentage has been reduced to 20 per cent. The words "issued and subscribed share capital" have been substituted for the words "issued share capital" as the latter term is somewhat confusing and is used indiscriminately.

*Clause 17*—Past failures of several banks in India have been due mostly to indiscriminate advances to directors or their concerns. An absolute and unqualified ban on such transactions would, however, result in depriving the banks of the advantage of having on their directorate important and experienced industrial magnates. A check is therefore prescribed on advances to directors and their concerns.

*Clause 18*—When the Reserve Bank's original "Proposals for an Indian Bank Act" were circulated



by Government in 1940, suggestions were received that a system of licencing foreign banks doing business in British India should be introduced. The Banking Enquiry Committee had also recommended that banks should be required to take out licences from the Reserve Bank, such licences being granted freely to the existing banks. Clause 18 seeks to introduce a comprehensive system of licensing of banks by the Reserve Bank, the grant of the licence being dependent upon the maintenance of a satisfactory financial condition subject to the further qualification in the case of foreign banks that their country of origin does not discriminate in any manner against British Indian banks. Existing banks are exempted for a period of five years from the obligation to take out a licence. Provision has also been made for the licensing of the opening of branches by banks to prevent indiscriminate expansion of bank branches.

*Clause 19*—This clause is an attempt to prescribe by law what has already been recognised as sound banking practice, viz., that a bank should keep a reserve of cash and liquid assets to meet its demand liabilities. One of the worst defects of Indian banking is the propensity of the smaller banks to overtrade at the expense of liquidity and it seems best to insist on all banks maintaining a reasonable large proportion of their cover in the form of cash or trustee



securities as defined in the Indian Trusts Act, excluding immovable property. The proportion of 25 per cent. is in accordance with the actual practice followed by smaller banks.

*Clause 20*—The failure of a bank incorporated in an Indian State, which has the bulk of its deposits from British India but the great part of the assets in Indian States, has brought out the necessity of protecting the interests of British Indian depositors by requiring such banks to maintain a reasonable proportion of their British India liability in the form of assets in British India. Export Bills are included in such assets with a view to helping Indian exports.

*Clause 21*—The intention in prescribing an annual return of deposits which remain unclaimed for 10 years is to enable the Reserve Bank to have the necessary data for consideration of the question whether deposits remaining unclaimed for a prescribed period should be transferred to Government making it responsible for meeting any claim which may be established in future. Similar provisions are called for, in the banking legislation of Canada, and it is provided there that after the lapse of a certain period of years the deposits will be paid over to Government.

*Clause 22*—The existing return under Section 42 of the Reserve Bank Act applies only to scheduled

banks and also omits important details like investments. For an adequate control of banking development, it is necessary that the Reserve Bank should have a full picture of the banking situation of the country through periodical returns of assets and liabilities. It is also desirable in order that the Reserve Bank may be able to discharge its responsibilities as the Central Bank of the country that it should be authorised to call for information relating to their business from banks. A similar provision is contained in the Bank of England Bill 1945.

*Clause 23*—It is desirable to authorise the Reserve Bank to publish in a consolidated form the information obtained by it under clause 22 if it considers such publication in the public interest.

*Clause 24*—The Form F, laid down by the Indian Companies Act is meant for companies in general and is not suited to the special requirements of banking companies. Many of the smaller banks publish their balance sheets in different forms and there is no uniformity of presentation. The Banks also close their books on different dates making it difficult to have a picture of the banking situation of the country as on a particular date. The Central Banking Inquiry Committee, which considered this question in detail, recommended a separate form for banking companies.

As regards banks incorporated outside British India, there is no provision in the Companies Act for the publication of separate balance sheets of their Indian business. In Forms A and B of the Schedule to the Banking Companies Bill, an attempt has been made to provide a form of balance sheet and profit and loss account specially suitable for banking companies.

*Clause 25*—This provides for the audit of the statements prescribed under clause 24.

*Clause 26*—At present, some of the banks publish their balance sheets after a considerable period from the date to which they relate so that the position of the banks remains unknown for an unduly long period. The clause remedies this defect.

*Clause 27*—This is based on Section 17 of the Insurance Act, 1938.

*Clause 28*—There is no provision in the Indian Companies Act for the publication of balance sheets by banking companies incorporated outside British India. Section 136 contained in section 136 applicable to companies incorporated in British India. This clause provides for uniformity of treatment as regards the publication of balance sheets.

*Clause 29*—This provides for the period of transition and follows Section 17A of the Insurance Act, 1938.

*Clause 30*—The opinions received on the Reserve Bank's "Proposals for an Indian Bank Act" circulated in 1940 revealed that public opinion was generally in favour of the inspection of banks by Government or the Reserve Bank. In view of this and in the light of the experience gained by the Reserve Bank in connection with the inspection of banks for the purposes of Section 42 (6) of the Reserve Bank Act, and in view of possible post-war developments provision has been made for the inspection, in certain circumstances, of a bank's books by the Reserve Bank at the instance of the Central Government. A regular system of inspection of all banks does not seem practicable and provision has therefore been made for inspection only where necessary in the interests of depositors. Sub-clause (1) generally follows the lines of Section 33 (1) of the Insurance Act, and sub-clauses (2) and (3) make necessary provision for securing that the directors and officers of the bank furnish all information and documents requisite for a proper investigation of its affairs. Clauses (4) and (5) enumerate the corrective measure which the Central Government may take.

*Clause 31*—This clause is a modification of Section 277N of the Indian Companies Act, the period of moratorium having been limited to three months. It is the intention that the report under



sub-clause (2) should be submitted by the Reserve Bank.

*Clause 32*—The provisions of the Indian Companies Act in respect of liquidation do not seem to be suitable for banking companies. A bank's business is conducted on an over-the-counter basis and it is important that current accounts should be withdrawable at any time and drafts etc. should be honoured on presentation, otherwise great business dislocation is likely to result. A provision has, therefore, been made under this clause for the winding up of a banking company if it refuses to meet a lawful demand for payment at one of its offices or branches within two working days, if such demand is made at a place where there is an office or branch or agency of the Reserve Bank, or within four working days, elsewhere. The clause also authorises the Reserve Bank to apply for the liquidation of a banking company if it appears from the results of an inspection made under clause 30 that its affairs are being conducted to the detriment of the interests of its depositors.

*Clause 33*—Experience has shown that the cost of liquidation proceedings under the Indian Companies Act is high. It has, therefore, been provided in this clause that the Reserve Bank should be empowered to carry out liquidations so that unnecessary expense

and delay in liquidation proceedings may be avoided, and that the assets may be realised as speedily and cheaply as possible in the interests of the creditors.

*Clause 34*—This limits the powers of the Court to stay proceedings to cases in which it is satisfied that the depositors can be paid in full.

*Clause 35*—The period prescribed under section 177B, of the Indian Companies Act for the submission of a preliminary report by the official liquidator is too long in the case of a banking company and the clause is intended to remedy this defect.

*Clause 36*—In the case of banking company rapidity in liquidation is essential if the assets are not to grow cold or to be dissipated. The provisions for calling meetings of creditors to discuss arrangements or to appoint an advisory committee to work with the official liquidator should, therefore, be rescinded in the case of banking companies unless the Court considers that this should be done.

*Clause 37*—This simplifies the formalities for depositors proving their debts.

*Clause 38*—It has been found that banking companies in a shaky condition take advantage of the voluntary winding up proceedings or manipulate such proceedings to the disadvantage of the depositors who are a scattered body and are unlikely to take con-

certed action. The clause is intended to prevent such abuses.

*Clause 39*—This clause is intended to make amalgamations of banks subject to the approval of the Reserve Bank so as to prevent amalgamations between unsound companies.

*Clause 40*—This provides for penalties in the event of non-compliance with the provisions of the Act.

*Clause 41*—This is based upon section 278 of the Indian Companies Act.

*Clause 42*—This is based upon section 279 of the Indian Companies Act.

*Clause 43*—This empowers the Central Government to make regulations under the Act after consultation with the Reserve Bank.

*Clause 44*—This is a consequential amendment.

*Clause 45*—The experience of the working of section 42 (6) of the Reserve Bank Act indicates the desirability of amending it in the following respects:—

(1) The authority to include in or exclude from the second schedule any bank should vest in the Reserve Bank rather than the Central Government, as the former is in the best position, and the latter has no independent means of verifying whether the bank satisfies the requirements of the section.

(2) In view of the increased status and the general impression of soundness created by the inclusion of a bank in the schedule, a further criterion should be added for admission, namely, that the affairs of the bank concerned are not being conducted to the detriment of the interests of its depositors and provision should be made for exclusion from the schedule if the bank ceases to satisfy this condition.

(3) Provision is also necessary for the grant of extensions of time to a bank before its exclusion to enable it to set its affairs in order where it appears that there is a reasonable prospect of an improvement in its affairs during the period.

(4) The term 'value' for the purposes of the section should be clearly defined as the real or exchangeable value of the capital and reserves and not the nominal value as shown in the bank's books and provision should also be made for the settlement of any dispute in this regard.

This clause seeks to amend section 42 (6) on these lines.

*Clause 46—Repeals.*



## **APPENDIX B**

# **BANKING COMPANIES BILL**

**L. A. Bill No. 26 of 1944**

*A Bill to consolidate and amend the law relating to banking companies*

WHEREAS it is expedient to consolidate and amend the law relating to banking companies ;

It is hereby enacted as follows :—

### **PART I**

#### **PRELIMINARY**

1. *Short title, extent and commencement.*—(1) This Act may be called the Banking Companies Act, 1945.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. *Application of other laws not barred.*—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation

of, the Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

3. *Act not to apply to co-operative banks.*—Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in British India relating to Co-operative Societies.

4. *Power to suspend operation of Act.*—(1) The Central Government, if on a representation made by the Reserve Bank in this behalf it is satisfied that it is expedient so to do, may by notification in the official Gazette suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf, may in like manner exercise the powers of the Central Government under sub-section (1), and where he does so, he shall report the matter to the Central Government forthwith.

(3) The Central Government may, by notification in the official Gazette, extend from time to time

the period of any suspension ordered under sub-section (1) or sub-section (2) for such period, not exceeding sixty days at any one time, as it thinks fit.

5. *Definitions*.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “approved securities” means securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trusts Act 1882 (II of 1882) ;

(b) “banking” means the accepting of deposits repayable on demand ;

(c) “banking company” means any company which may be wound up under the Indian Companies Act, 1913 (VII of 1913) and which transacts the business of banking in British India ;

(d) “Court” means the Court having jurisdiction under the Indian Companies Act, 1913 (VII of 1913) ;

(e) “demand liabilities” means liabilities which must be met on demand, and “time liabilities” means liabilities which are not demand liabilities ;

(f) “managing agent” means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of

the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called :

*Explanation.*—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of this Act.

(g) "prescribed" means prescribed by rules made under this Act :

(h) "registrar" has the same meaning as in clause (15) of sub-section (1) of section 2 of the Indian Companies Act, 1913 (VII of 1913) ;

(i) "Reserve Bank" means the Reserve Bank of India :

(j) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934).

## PART II

### **Business of Banking Companies**

6. *Forms of business in which banking companies may engage.*—(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely :—



(a) the borrowing, raising, or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not ; the granting and issuing of letters or credit, travellers cheques and circular notes ; the buying, selling and dealing in bullion and specie ; the buying and selling of foreign exchange including foreign bank notes ; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds ; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise : the collecting and transmitting of money and securities ;

(b) acting as agents for Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent of a company

including the power to act as attorneys and to give discharges and receipts;

(c) contracting for public and private loans and negotiating and issuing the same ;

(d) the promoting, effecting, insuring, guaranteeing, underwriting participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;

(e) carrying on and transacting every kind of guarantee and indemnity business .

(f) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;

(g) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ;

(*h*) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ;

(*i*) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advances or which may be connected with any such security ;

(*j*) undertaking and executing trusts ;

(*k*) undertaking the administration of estates as executor, trustee or otherwise ;

(*l*) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;

(*m*) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons ; granting pensions and allowances and making payments towards insurance ; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object ;

(*n*) the acquisition, construction, maintenance

and alteration of any building or works necessary or convenient for the purposes of the company ;

(o) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;

(p) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;

(q) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company :

(r) any other form of business which the Central Government may by notification in the official Gazette specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company whether incorporated in or outside British India shall engage in any form of business other than those referred to in subsection (1).

7. *Use of words 'bank', 'banker', 'banking'.—*  
(1) After the expiry of two years from the commencement of this Act, no company shall carry on the business of banking in British India unless it uses



as part of its name at least one of the words "bank", "banker" or "banking".

(2) Every company which uses as part of the name under which it carries on business any of the words "bank", "banker" or "banking" shall be deemed to be a banking company and shall be subject to the provisions of this Act as such.

8. *Prohibition of trading.*—Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, or engage in any trade, or buy or sell or barter goods or articles of merchandise for others :

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the 1st day of January, 1945, so however that the said business shall be completed before the expiry of one year from the commencement of this Act.

*Explanation.*—The expression "goods" in this section does not include stocks and shares.

9. *Disposal of non-banking assets.*—Where any banking company acquires or has acquired any assets in satisfaction of its claims in the course of its banking business, being assets in respect of which it is not lawful under section 6 or section 8 for the company

to transact business, it shall dispose of such assets within a period of seven years from the date of its acquisition of such assets or from the commencement of this Act, whichever is later :

Provided that the Reserve Bank may in any particular case extend the said period by such period not exceeding three years as it thinks fit where it is satisfied that such extension would be in the interest of the depositors of the banking company.

10. *Prohibition of employment of managing agents and restrictions on certain forms of employment.*—No banking company, whether incorporated in or outside British India, which carries on business in British India, shall after the 30th day of June 1946 employ, or be managed by, a managing agent, or any person whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company, or whose remuneration is on a scale disproportionate according to the normal standards prevailing in banking business to the resources of the company, or any person having a contract with the company for its management for a period exceeding five years at any one time :

Provided that the said period of five years shall, in relation to contracts subsisting on the 1st day of July 1944, be computed from that date :

Provided further that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors think fit.

11. *Restrictions on commencement of business and conditions for carrying on business.*—(1) Notwithstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), no banking company in existence on the 1st day of January 1945 shall after the expiry of two years from the commencement of this Act carry on business in British India and no other banking company shall after the commencement of this Act commence or carry on business in British India, unless it has a paid-up capital and reserve—

(i) of not less than twenty lakhs of rupees, if it has a place of business in India outside the province in which it has its principal place of business or if it has its principal place of business elsewhere in India than in British India, or

(ii) in a case to which clause (i) does not apply, of not less than—

(a) five lakhs of rupees in respect of a place of business at Bombay or Calcutta, *plus* (b) Two lakhs of rupees in respect of each town (other than Bombay and Calcutta) having a population of over 1,00,000 in which it has a place of business, *plus*

(c) ten thousand rupees in respect of each place of business elsewhere :

Provided that in the case of a banking company to which only sub-clause (c) of clause (ii) is applicable the minimum amount of paid-up capital and reserve for the purposes of this sub-section shall be one lakh of rupees :

Provided further that no banking company shall be required to have paid-up capital and reserve exceeding twenty lakhs of rupees.

(2) A banking company incorporated elsewhere than in British India or the United Kingdom shall be deemed to have complied with the provisions of sub-section (1) only if it keeps deposited with the Reserve Bank an amount not less than the minimum amount of paid-up capital and reserve required in its case under that sub-section either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

(3) No banking company, whether incorporated in or outside British India, if incorporated on or after the 15th day of January 1937, shall after the 30th day of June 1946 carry on business in British India unless it satisfies the following conditions, namely :—

(a) that the subscribed capital of the company is



not less than half the authorised capital, and the paid-up capital is not less than half the subscribed capital, and

(b) that the capital of the company consists of ordinary shares only, or ordinary shares and such preference shares as may have been issued before the 1st day of July 1944 only, and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholder, whether a preference shareholder or an ordinary shareholder, to the paid-up capital of the company.

12. *Prohibition of charge on unpaid capital.*—No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

13. *Reserve Fund.*—Every banking company not being a scheduled bank shall maintain a reserve fund, and shall out of the declared profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

14. *Cash reserve.*—Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash a sum equivalent to at least one and a

half per cent. of its time liabilities and five per cent. of its demand liabilities and shall file with the Reserve Bank before the tenth day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month with particulars of its time and demand liabilities on each such Friday.

15. *Restriction on nature of subsidiary companies.*—(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor, trustee or otherwise, or such other purposes set out in section 6 as are incidental to the business of banking.

(2) Save as provided in sub-section (1), a banking company shall not hold shares in any company whether as pledges, mortgagee or absolute owner of an amount exceeding forty per cent. of the issued and subscribed share capital of that company :

Provided that nothing in this sub-section shall apply to shares held by a banking company before the 15th day of January 1937.

16. *Restrictions on loans and advances.*—Notwithstanding anything to the contrary contained in

section 54A of the Indian Companies Act, 1913, (VII of 1913), no banking company shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to its directors or to firms or companies in which it or any of its directors is interested as partner, director or managing agent.

17. *Licensing of banking companies incorporated outside British India or United Kingdom.*—(1) No company incorporated elsewhere than in British India or the United Kingdom which is not at the commencement of this Act carrying on the business of banking in British India shall commence such business or open any branch or office for the purpose of such business, in British India without previously obtaining a licence from the Reserve Bank.

(2) Before granting any such licence, the Reserve Bank may require to be satisfied that—

(a) the company is incorporated in a country, the Government or law of which does not discriminate in any way against banking companies registered in British India, and

(b) the company complies with all the provisions of this Act applicable to banking companies incorporated outside British India.

(3) The Reserve Bank may cancel any licence

granted under this section on the breach of any condition required to be satisfied before the licence was granted, or if the company ceases to carry on the business of banking in British India or goes into liquidation.

18. *Maintenance of a percentage of assets.*

(1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price an amount which shall not at the close of business on any day be less than twenty-five per cent. of the total of its time and demand liabilities in British India.

*Explanation.*--For the purposes of this section liabilities shall not include the paid-up capital or the reserve or any credit balance in the profit and loss account of the company or the amount of any loan taken from the Reserve Bank.

(2) In computing the amount for the purposes of sub-section (1), the deposit required under sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated elsewhere than in British India or the United Kingdom and the balance required under section 42 of the Reserve Bank of India Act, 1934 (II of 1934), to be maintained



with the Reserve Bank by a scheduled bank shall be deemed to be cash maintained.

(3) For the purpose of securing compliance with the provisions of this section, every banking company shall, not later than two working days after the last date to which it relates, furnish to the Reserve Bank in the prescribed form and manner a weekly return showing the liabilities of the banking company at the close of each day of the week to which it relates.

19. *Assets in British India.*—(1) At the close of the last working day of each calendar year the assets in British India of every banking company shall not be less than seventy-five per cent. of its time and demand liabilities in British India.

(2) Every banking company shall before the 1st day of February in each year submit to the Reserve Bank a return in the prescribed form and manner of such assets and liabilities as at the close of the last working day of the previous calendar year.

(3) For the purposes of this section assets in British India shall be deemed to include such promissory notes, bills of exchange and securities as the Reserve Bank is under the Reserve Bank of India Act, 1934 (II of 1934), empowered to purchase, discount or make advances against, and export bills drawn in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf.

20. *Monthly returns and information regarding advances and investments.*—(1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in British India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

(2) The Reserve Bank may call for information every half-year regarding the classification of advances and investments of banking companies in respect of industry, commerce and agriculture.

(3) The Reserve Bank may publish the information so obtained from the returns under this section in such consolidated form as it may think necessary.

21. *Return of unclaimed deposits.*—Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in British India which have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account :

Provided that in the case of moneys deposited for

a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period.

22. *Accounts and balance sheet.*—(1) At the expiration of each calendar year every banking company incorporated in British India, in respect of all business transacted by it, and every banking company incorporated outside British India which carries on business in British India, in respect of all business transacted through its branches in British India, shall prepare with reference to that year a balance sheet and profit and loss account as on the last working day of the year in the Forms set out in the Schedule or as near thereto as circumstances admit.

(2) The balance sheet and profit and loss account shall be signed—

(a) in the case of a banking company incorporated in British India, by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) in the case of a banking company incorporated outside British India, by the manager or agent of the principal office of the company in British India.



(3) Notwithstanding that the balance sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913), the provisions of that Act relating to the balance sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance sheet or profit and loss account, as the case may be, of a banking company.

23. *Audit.*—(1) The balance sheet and profit and loss account prepared in accordance with section 22 shall be audited—

(a) in the case of a banking company incorporated in British India, by an auditor holding a certificate under section 144 of the Indian Companies Act, 1913 (VII of 1913), entitling him to act as an auditor of companies, and

(b) in the case of a banking company incorporated outside British India either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed



on, auditors of companies by section 145 of the Indian Companies Act, 1913 (VII of 1913).

24. *Submission of returns.*—The accounts and balance sheet referred to in section 22 duly audited shall be printed, and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer :

Provided that the Central Government may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

25. *Exemption from certain provisions of Act VII of 1913.*—Where a banking company in any year furnishes its balance sheet and accounts in accordance with the provisions of section 24, it may at the same time send to the registrar three copies of such balance sheet and accounts, and where such copies are so sent, it shall not be necessary for the company to file copies of the balance sheet and accounts with the registrar as required by sub-section (1) of section 134 of the Indian Companies Act, 1913 (VII of 1913), and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

26. *Display of audited balance sheet by companies incorporated outside British India.*—Every

banking company incorporated outside British India which carries on business in British India shall, not later than the first Monday in August of any year in which it carries on business in British India, display in a conspicuous place in its principal office and in every branch office in British India a copy of its last audited balance sheet and profit and loss account, and shall keep the copy so displayed until replaced by a copy of the subsequent balance sheet and profit and loss account.

27. *Accounting provisions of this Act not retrospective.*—Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

28. *Inspection.*—(1) Without prejudice to the provisions contained in sections 137, 138, and 139 of the Indian Companies Act, 1913 (VII of 1913), the Central Government may, if it has any reason to believe that the interests of the depositors of a banking company are in danger or that a banking company is

unable to meet its obligations or has made default in complying with any of the provisions of this Act or that an offence under this Act has been or is likely to be committed by a banking company or any officer of a banking company or that it is otherwise desirable or necessary, direct the Reserve Bank to inspect the banking company, its books and accounts and make a report thereon to the Central Government.

(2) On receipt of a report under sub-section (1), the Central Government if it is satisfied from the report that the affairs of a banking company are being conducted to the detriment of the interest of its depositors, may—

(a) by order in writing prohibit the banking company from receiving fresh deposits, or

(b) if the banking company is a scheduled bank, notwithstanding anything contained in sub-section (6) of section 42 of the Reserve Bank of India Act, 1934 (11 of 1934), by notification in the official Gazette direct the exclusion of the banking company from the Second Schedule to that Act, or

(c) direct the Reserve Bank to apply for the winding up of the banking company, or

(d) act in respect of the banking company under more than one of the foregoing clauses :

Provided that the Central Government may cancel or modify any order passed under this subsection upon such terms and conditions as it may think fit to impose.

(3) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion of it as may appear necessary to the Central Government.

29. *Penalties.*—(1) If default is made in complying with the requirements of this Part, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Without prejudice to the provisions of subsection (1), if any banking company fails to comply with the provisions of section 18 or section 19, the Reserve Bank shall by notice in writing make a demand to the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do, the Reserve Bank shall apply to the Court for the winding up of the banking company.



## PART III

**Suspension of Business and Winding up of Banking Companies**

30. *Suspension of business.*—(1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period up to a total period not exceeding three months in all.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted :

Provided that the Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report.

31. *Winding up by Court.*—(1) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913 (VII of 1913), and without prejudice to its powers under section 30, the Court shall order the winding up of a

banking company if it is unable to pay its debts, and the Court shall also order the winding up of a banking company if the Reserve Bank, which is hereby authorised so to do, applies in this behalf to the Court on either of the following grounds, namely :—

(a) that it appears from the results of an inspection made under section 28 that the affairs of the company are being conducted to the detriment of the interest of its depositors, or

(b) that the company has failed to comply with the provisions of section 18 or section 19, and with a notice served upon it under sub-section (2) of section 29.

(2) Without prejudice to the provisions contained in section 163 of the Indian Companies Act, 1913 (VII of 1913), a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand for payment made at any of its offices or branches within two working days if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within four working days if such demand is made elsewhere.

(3) A copy of every application by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar.

32. *Reserve Bank to be official liquidator.*—Notwithstanding anything to the contrary contained in section 175 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank shall be appointed as the official liquidator in relation to the winding up by Court of a banking company.

33. *Stay of proceedings.*—Notwithstanding anything to the contrary contained in section 173 of the Indian Companies Act, 1913 (VII of 1913), the Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

34. *Report of liquidator.*—Notwithstanding anything to the contrary contained in section 177B of the Indian Companies Act, 1913 (VII of 1913), where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the Court within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the Court to order the payment of a preliminary dividend if sufficient assets are available.

35. *Power to dispense with meetings of creditors, etc.*—Notwithstanding anything to the contrary con-

tained in sections 178A and 183 of the Indian Companies Act, 1913 (VII of 1913), the Court may in the proceedings for winding up a banking company dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

36. *Booked depositors' credits to be deemed proved.*—Notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act, 1913 (VII of 1913), the Court shall deem that the amounts shown in the books of a banking company as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the official liquidator shows that there is reason for doubting any particular entry.

37. *Restriction on voluntary winding up.*—Notwithstanding anything to the contrary contained in section 203 of the Indian Companies Act, 1913 (VII of 1913), no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in sections 218 and 220 of that Act, the Court shall, on the application of the Reserve Bank, order the winding up of the



company by the Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

## PART IV

### Miscellaneous

38. *Power of Central Government to make rules.*—(1) The Central Government may, after consultation with the Reserve Bank, make rules consistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted.

(3) All rules made under this section shall be published in the official Gazette and shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published.

39. *Amendment of section 17, Act II of 1934.*—In section 17 of the Reserve Bank of India Act, 1934, the word “and” at the end of clause (15) of section 17 shall be omitted, and after that clause the following clause shall be inserted, namely :—

“(15A) the performance of the functions of the Bank under the Banking Companies Act, 1945 ;”

40. *Repeal of Part XA, Act VII of 1913.*—All the provisions contained in Part XA of the Indian Companies Act, 1913 (VII of 1913), are hereby repealed.

## STATEMENT OF OBJECTS AND REASONS

The provisions of law relating to banking companies at present form a subsidiary portion of the general law applicable to companies and are contained in Part XA of the Indian Companies Act 1913. These provisions, which were first introduced in 1936 and which have undergone two subsequent modifications, have proved inadequate and difficult to administer. Moreover while the primary objective of Companies Law is to safeguard the interest of the stock-holder, that of banking legislation should be the protection of the interests of the depositor. It has therefore been felt for some time that separate legislation was neces-

sary for the regulation of banking in India. This need has become the more insistent on account of the considerable development that has taken place in recent years in banking, especially the rapid growth of banking resources and of the number of banks and branches. The enactment of a separate and more detailed Act has in consequence now become imperative. Regard must also be had to the fact that the banking system is likely in the post-war period to be more vulnerable by reason of the great expansion, both quantitatively and relatively, that has taken place in demand deposits, as compared with time deposits, during the war years.

2. The provisions of Part XA of the Indian Companies Act, which part will now be repealed, are incorporated in the Bill with certain modifications and the addition of several new provisions designed to safeguard the interests of depositors and to ensure the development of banking in India on sound lines. The main features of the Bill are as follows :—

- (i) The simple definition of banking with the object of limiting the scope of the legislation to institutions in which the funds are deposited primarily to ensure their safety and ready withdrawability ;
- (ii) Prescription of minimum capital standards ;
- (iii) Prohibition of trading with a view to eliminating non-banking risks ;

(iv) Inclusion in the scope of the legislation of banks incorporated or registered outside British India ;

(v) Provision of an expeditious procedure for liquidation ;

(vi) Inspection of the books and accounts of a bank by the Reserve Bank when necessary ;

(vii) Empowering the Central Government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors ;

(viii) Prescription of a special form of balance sheet and conferring of powers on the Reserve Bank to call for periodical returns.

A. J. RAISMAN.

NEW DELHI,  
*The 14th November, 1944.*

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MD. RAFI,  
*Secy. to the Govt. of India.*



## APPENDIX C

A memorandum (as drafted by the author of this book) and submitted on behalf of an Association of banks in the matter of the 1944 Bill.

This Association recognises that there is an urgent necessity for legislation so designed as to ensure healthy development of banking in India.

The bill introduced in the Central Legislative Assembly on the 16th Nov. 1944 and now in circulation for eliciting opinion has received anxious and careful consideration of the Association.

The Association agrees that in the context of war-time developments any well conceived banking legislation must take note of the undue preponderance of demand liabilities born of the prevailing inflationary conditions.

But the Association fears that on the assumption that there has been considerable development in banking and rapid growth of banking resources (as set out in the statement of Objects and Reasons) the bill has been framed on lines suitable for a country which is adequately served in respect of banking needs.

The Association ventures to urge that following

the growth of banking legislation in Canada banking law in India should adopt a course of periodical revision in the light of developments covering a period of, say, a decade. It is a further contention of the Association that legislation for the first post-war period of ten years should proceed on the assumption that banking in India now requires to be nursed not only into shape but also into size.

The suggestions offered below for modification of the detailed provisions of the bill will, the Association believes, receive sympathetic consideration if it is sufficiently realised that without a considerable and wide development of banking, soundness of banking will as surely defeat realisation as without a considerable and wide market a gilt-edged security will remain a frozen asset.

It is now proposed to express considered views of the Association on the Bill as follows :—

(1) Re ; Sec. 5 (c)

The definition of "banking company" as contained herein is not sufficiently comprehensive. It should be widened in scope to include bodies and persons other than companies that may be wound up under the Indian Companies Act. It should extend at least as far as the Insurance Act does in this matter.

## (2) Re ; Sec. 8

Prohibition of trading is a salutary provision, but the services that a banker may render in promoting business connections in the developing economy of the country receive a serious check in the prohibition of its acting as an agent in buying and selling goods. The words "or buy or sell or barter goods or articles of merchandise for others" as contained in the first para of Sec. 8 should therefore be omitted.

## (3) Re ; Sec. 9

In the absence of any word or words implying permission to deal in goods and undertake business other than that contemplated in Sec. (6) the terms of this section may be construed in a manner contrary to the purpose of the section. It is suggested, therefore, that either the words "subject to the provisions of Sec. 9" should be suitably introduced in Section (6) and (8) or the words "notwithstanding anything contained in Sections (6) and (8)" should be inserted in Sec. (9).

## (4) Re ; Sec. 10

This section presupposes a stage of banking development that has been reached in more advanced countries. In the early periods of banking growth men with first-class merits cannot be attracted by the

remunerations that banks of present dimensions in India can offer with their slender or at the most moderate resources. Really able and honest men will agree to work on small incomes in the beginning only if they are assured of rising incomes with increasing profits of the concern they serve. Such rising incomes cannot, in the existing state of things, be related to periodical increments, but can only depend on growth of business. The Association is of opinion that this provision will tend to defeat the very purpose which it seeks to achieve. Safeguards against speculative business should be more direct and take the form of control and regulation of business.

Without detriment to the above opinion the Association also maintains that the words "employ" and "commission" should be so qualified as not to prevent a bank from paying commission to an agent who may undertake to secure deposits, sell shares, or introduce or organise business.

#### (5) Re ; Sec. 11

This section constitutes a big jump from the position taken up by the Indian Banking Enquiry Committee. Rightly or wrongly, many banks that fall far short of these standards have been brought into existence. These banks together have gathered a sizable amount of deposits. Compulsory liquidation



tion for failure to reach up to the new standards will result in loss and depreciation of their assets leading to unnecessary injury to the very depositors whose interests the present bill avows to protect. The adequacy of capital structure, further, is not capable of rigidly quantitative measurement in the existing formative state of Indian Banking.

This Association holds that the purpose of this section will be fully and adequately served if a graduated rise in share-capital in proportion to the volume and extent of business of a banking company is provided for. Such provision will, in fact, represent a direct and more effective furtherance of the purpose involved in the principle based on population and locality.

The Association suggests, therefore, that no banking company should be allowed to commence business unless it has, and no banking company in existence on the 1st day of January, 1945, should be allowed to continue business unless it has, within two years from the commencement of the Act, a paid-up share capital which is at least equal to a figure obtained by multiplying Rs. 10,000/- by its number of branches, or one-tenth of its total deposits (whichever is greater) subject to a minimum of Rs. 1 lac, provided that no banking company should be required to have a paid-up capital of more than Rs. 20 lacs.

It seems incongruous that a banking company is allowed to have a place of business outside India without reaching the maximum standard if the foreign country in which it operates does not lay down such standards, and that a banking company having its principal place of business outside India need not reach the maximum figure of Rs. 20 lacs.

It also appears to the Association that the words "a place" occurring in sub-clause ii (a) of sub-sec. (1) and the words "each place" occurring in sub-clause ii (c) are capable of differing interpretations. It should be made clearer that these sub-clauses permit a bank to have more than one branch in a town or city if the bank acquires the amounts of paid-up capital as stated in the respective clauses.

The Association finally is of opinion that the provisions of sub-sec. (3) should apply to all banks whether incorporated before or after 15th Jan. 1937.

(6) Re; Secs. 14 and 18

The Association suggests that balances maintained with Scheduled banks by non-scheduled banks on current Account should be regarded as cash for the purposes of these sections.

(7) Re ; Sec. 19

In order to obviate possibilities of disagreement

between the Reserve Bank authorities and the Management of a bank it should be negatively stated as to what shall not be regarded as assets.

(8) Re ; Sec. 22

It should be specifically stated that notwithstanding anything contained in the Indian Companies Act all provisions regarding 'Balance Sheet' and 'Profit and Loss Account' as contained in that Act shall be deemed, in the case of a banking company, to refer to a balance sheet and a profit and loss account prepared in the forms required under this Act.

(9) Re ; Sec. 25

This Section may be omitted if the suggestion put forward regarding amendment of Sec. 22 is accepted.

(10) Re ; Secs. 29 and 31

It appears that the Court is allowed no discretion, but is required only to record in a formal order the decision already arrived at by the Reserve Bank. In order that there may be no unhealthy mixing up of judicial and executive functions it is suggested that an independent Body be formed consisting of a representative of banks, a representative of Reserve Bank, a person appointed by the Central Govt. to re-



present the interests of depositors, and one Ex-judge of High Court. This Body should be vested with powers to authorise Reserve Bank to apply to Court for the winding up of a banking company. In this connection it is urged that a bank is also entitled to protection against frivolous and harassing actions often instituted in Courts of law by persons without having any justifiable cause of action. It is suggested, therefore, that this Act should contain an amendment of the existing law and provide that no action can be started in any Court of law against a banking company unless authorised by the Body above proposed to be created.

(11) *Re ; Balance Sheet*

The Association notes that items Nos. (vi) and (vii) of particulars under the head "Loans, Advances, Cash Credits, and overdrafts" on the right-hand side of the Balance Sheet introduces new particulars. It needs to be borne in mind that Indian Public has not yet received sufficient instruction in banking methods and practices to be able properly to judge the merits of these particulars. It frequently happens that a bank in order to maintain satisfactory watch over the affairs of a company to which it makes advances stipulates that a Director of the bank should be a Director of the borrowing company. There is every



likelihood that a specific mention of these particulars will lead the uninstructed public to suspect mischief, and unnecessarily harass the management in its conduct of the business of the bank on lines, otherwise perfectly sound, but brought into ugly relief in the balance sheet.

The Association suggests, therefore, that instead of these particulars being required to be disclosed in the balance sheet the return to be prescribed under Sec. 19 (2) should be made to include these particulars. The Reserve Bank may be placed in possession of all particulars regarding assets and liabilities of a banking company and trusted to determine as to whether the interests of the depositors are in safe hands or not. A banking company should not be left to toss in the scale of inexpert judgment of the lay public.

Subject to the observations above made the Association accords its whole-hearted support to the present move for consolidating and extending the scope of law relating to Banks carrying on business in British India.



